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No. 91-1151

In The

Supreme Court of the United States

October Term, 1991

JOHN J. ADKINS, ET AL.,

Petitioners,

v.

GENERAL MOTORS CORPORATION, ET AL.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF FOR GENERAL MOTORS CORPORATION IN OPPOSITION

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QUESTION PRESENTED

Whether this Court should review the Sixth Circuit's fact-bound determination that petitioners' state law causes of action are inextricably intertwined with collective-bargaining agreements and preempted by Section 301 of the Labor Management Relations Act, where the Sixth Circuit conscientiously and correctly applied the preemption test established in this Court's precedents and where its decision is consistent with the rulings of other courts of appeals.

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BRIEF FOR GENERAL MOTORS CORPORATION IN OPPOSITION

Respondent General Motors Corporation ("GM") submits this brief in opposition to the petition for a writ of certiorari.[1]

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1) is reported at 946 F.2d 1201. The district court's opinion sustaining in part GM's motion for summary judgment (App., *infra*, 1a) is unreported. The district court's opinion granting in part GM's motion for reconsideration of the court's decision on petitioners' motion to remand (App., *infra*, 7a) is reported at 713 F. Supp. 1043.

JURISDICTION

The judgment of the court of appeals was entered on October 15, 1991. The petition for a writ of certiorari was filed on January 13, 1992. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT

The question in this case is whether the court of appeals properly applied *Allis-Chalmers Corp.* v. *Lueck*, 471 U.S. 202 (1985), and *Caterpillar Inc.* v. *Williams*, 482 U.S. 386 (1987), in holding that petitioners' state law claims were preempted by Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185. Petitioners originally asserted their claims in a Section 301 action, alleging that GM and their union had unfairly colluded to deny them certain special seniority rights. That action was dismissed as untimely. Petitioners then brought this action in state

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[1] The list of GM's non-wholly owned subsidiaries required by Rule 29.1 appears at Appendix, *infra*, 66a.

court, claiming fraud, tortious interference with contract rights, and intentional infliction of emotional distress. The court of appeals, after taking pains to decipher the "prolix and vague" allegations of petitioners' complaint (Pet. App. 7), unanimously held that these claims were preempted by Section 301. As this Court has recognized in denying certiorari petitions in several similar cases in recent years, there is no reason for the Court to review the court of appeals' application of settled law to the particular facts of cases such as this one.

A. The "Flow Arrangement" Under the Bridge Agreement

Until 1974, GM manufactured household appliances and automobile air conditioners at plants operated by its Frigidaire Division in Dayton, Ohio. Respondent International Union of Electrical, Radio & Machine Workers, AFL-CIO-CLC, and its Local 801 (hereinafter referred to together as the "Union") was the collective-bargaining agent for Frigidaire's hourly employees. Initially, all Frigidaire workers were paid at the automobile industry rate, even if they were engaged in making household appliances. But in 1971, GM and the Union agreed that Frigidaire workers engaged in appliance manufacture would be paid the lower appliance industry rates. In return, these appliance workers were permitted to transfer – "flow" – to higher-paying automotive jobs within the Frigidaire Division as positions became available. In the event of layoff from an automotive job to which they had transferred, these workers were permitted to flow back to an appliance position, bumping less senior appliance workers if necessary. Pet. App. 4-5; *Adkins* v. *International Union of Elec., Radio, & Mach.*, 769 F.2d 330, 332 (6th Cir. 1985).

Frigidaire's automobile air conditioner facilities were split off in 1974 and became part of GM's Delco Air Conditioning Division, but the 1971 flow arrangement continued. Frigidaire's workers could transfer to higher-paying automotive air conditioning jobs at Delco, and if

laid off by Delco could transfer back to appliance jobs at Frigidaire with their seniority intact. 769 F.2d at 332.

The flow arrangement was not included in any formal collective-bargaining agreements until 1976. The December 10, 1976 Frigidaire Local Agreement as well as the Delco Local Agreement of the same date included a "Bridge Agreement" (App., *infra*, 35a) setting out the flow arrangement. Frigidaire Local Agreement 46 (Dec. 10, 1976); Delco Local Agreement 45 (Dec. 10, 1976). Frigidaire and Delco employees hired before 1977 (who were designated "red-circled" employees) continued to enjoy the flow rights, but newer employees would not. App., *infra*, 35a, 37a.

B. The Sale of Frigidaire And The Termination Of The Bridge Agreement

In 1979, GM sold its Frigidaire Division and laid off the Frigidaire employees. Pet. App. 5. GM retained the Dayton Frigidaire plants, however, converting them to use for GM's Chevrolet Division. At the time, the Delco plant was experiencing full employment. *Ibid.* With the sale of the Frigidaire Division, former Frigidaire employees working at Delco could no longer transfer back to Frigidaire in the case of a Delco layoff.

GM and the Union negotiated about the Frigidaire layoffs in February 1979. They agreed that the Frigidaire workers who would be laid off as a result of the sale would be hired in the new Chevrolet plants with unbroken seniority when these plants opened in 1981, and that the Union would continue to represent them. See Special Memorandum of Understanding between GM, IUE and Local 801 ¶¶ IV-VI (Feb. 23, 1979), App., *infra*, 43a-44a. This Agreement was ratified on February 23, 1979, and it cancelled the special seniority rights that had been given to former Frigidaire workers under the 1976 Bridge Agreement. *Id.* at ¶ I, App., *infra*, 41a. See also Pet. App. 5. The February 23 agreement was subsequently incorporated into the Local Agreement between Chevrolet and

Local 801. Chevrolet Local Agreement 43-45 (Oct. 1, 1979).

The February 23, 1979 agreement (and the October 1, 1979 Chevrolet Local Agreement) applied to the laid-off Frigidaire workers, and not to Delco workers. 769 F.2d at 333. GM and the Union renegotiated the Delco collective-bargaining agreement later that year. Because GM no longer owned Frigidaire, the new Delco contract did not continue the right of former Frigidaire workers to transfer back to Frigidaire Division jobs if they were laid off by Delco. See Delco Local Agreement 14-19 (Sept. 19, 1979).[2]

Late in 1979, an economic slowdown hit the automobile industry and Delco was forced to lay off thousands of employees, including many of the previously red-circled former Frigidaire workers. When Chevrolet reopened the former Frigidaire plants in 1981 and began to recall former Frigidaire employees, pursuant to the collective-bargaining agreements then in place, it did not offer the jobs to the laid-off Delco workers. 769 F.2d at 333.

C. The First Round Of Litigation: The Federal Action

A group of laid-off Delco workers who no longer had any rights to jobs at Frigidaire – including many of the petitioners – brought suit in federal court alleging violations of both Section 301 and Section 101(a)(1) of the Labor-Management Reporting and Disclosure Act (LMRDA) (29 U.S.C. § 411(a)(1)). Pet. App. 2. This hybrid action alleged that the Union had breached its duty of fair

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[2] Petitioners imply that under the 1976 Bridge Agreement, they would have had the right to transfer to jobs at the former Frigidaire plants that reopened as Chevrolet plants in 1981. Pet. 10, 55-57. That is not correct; the Bridge Agreement gave such employees the right to transfer to jobs at the *Frigidaire Division* (App., *infra*, 37a), which ceased to exist as a GM division when it was sold in 1979.

representation and that GM and the Union "had colluded in negotiating a collective-bargaining agreement in order to abrogate the special seniority rights contained in" the Bridge Agreement. *Ibid.* The complaint also included pendent state law claims for breach of contract, tortious interference with contract rights, intentional infliction of emotional distress, and loss of consortium. *Id.* at 2-3.

The district court dismissed plaintiffs' federal labor law claims because they had been filed outside the six-month statute of limitations. See *DelCostello* v. *Teamsters*, 462 U.S. 151 (1983). The court also dismissed (without prejudice) plaintiffs' pendent state law claims for want of a substantial federal question. *Adkins* v. *General Motors Corp.*, 573 F. Supp. 1188 (S.D. Ohio 1983). The court of appeals affirmed. 769 F.2d 330 (6th Cir. 1985).

D. This Litigation: Petitioners' State Complaint

In 1983, while the appeal of the dismissal of the federal complaint was pending, petitioners initiated this suit against GM and the Union in Ohio state court. Pet. App. 3. In a complaint which the court of appeals described as "prolix," "vague," and "very difficult to understand," petitioners alleged fraud, tortious interference with contract rights, and tortious infliction of emotional distress. *Id.* at 7. As the court of appeals noted, it is "not easy work" to "sift through the complaint in order to detect the factual allegations." *Ibid.* Insofar as GM can discern, the factual basis for all of petitioners' claims appears to be as follows:

Petitioners contend that the Union excluded red-circled Delco employees from notification and ratification of the February 23, 1979 agreement (which directly related not to Delco employees but to the laid-off employees of the sold Frigidaire Division). Pet. 8-9; Pet. App. 5-6; Compl. ¶¶ 29-34, App., *infra*, 49a-54a. They also allege that during the notification and ratification process for the September 19, 1979 Delco Local Agreement, the Union "concealed" the fact that the new Agreement "omitted"

and thereby "abandon[ed]" the Bridge Agreement. Pet. 9; Pet. App. 5-6. These allegations form part of the basis for petitioners' emotional distress claims. Pet. 9 (citing Compl. ¶¶ 30-37, App., *infra*, 50a-55a). Petitioners also claim that "the president of Local 801 had fraudulently induced them to ratify the 1979 collective-bargaining agreement that abrogated the 'bridge agreement.' " Pet. App. 16. See also Pet. 8-9, 52.

Petitioners further allege that between February 1980 and January 1981 "respondents continued to try to keep secret the abrogation of the Bridge Agreement," made "representations and innuendos" to petitioners that "jobs would be forthcoming," "reminded" petitioners "of the old custom of 'flowing,' " and made "[p]romises of employment * * * individually and in groups." Pet. 10. When the Chevrolet plants began work and only Frigidaire workers were recalled to them, petitioners who objected were "called * * * cry-babies and ridiculed." *Id.* at 11. These allegations are the basis for petitioners' fraud, tortious interference with contract, and emotional distress claims. Pet. 11-12 (citing Compl. ¶¶ 73-79, 83, App., *infra*, 61a-64a).

Finally, petitioners contend that these actions all arose out of a conspiracy between GM and the Union to maintain the Union as the Chevrolet Division bargaining agent, to divide labor, and to replace petitioners with lower paid workers. Pet. 7-8 (citing Compl. ¶¶ 15, 16, 25-27 and 43-48, App., *infra*, 46a-49a, 58a-61a).

In their demand for relief, petitioners made clear that they were really asserting rights under the various collective-bargaining agreements. In addition to seeking compensatory and punitive damages, declaratory relief, and other equitable remedies, petitioners asked for "injunctive relief * * * with respect to each of the collective bargaining agreements heretofore described in the complaint, declaring * * * the express and implied obligations, as well as the intendment, spirit and purpose of each of said collective bargaining agreements in each of the respects hereinabove alleged in this complaint" (Demand

For Relief ¶ 1, App., *infra*, 64a), and also asked "[t]hat GM be adjudged to have breached each of the collective bargaining agreements." *Id.* at ¶ 4, App., *infra*, 65a.

Respondents removed this case to federal court pursuant to 28 U.S.C. § 1441, on the ground that petitioners' state law claims are preempted by federal labor law. Pet. App. 3. The district court ultimately held that petitioners' fraud and tortious interference with contract claims were preempted in their entirety by federal law. App., *infra*, 17a-26a. The court also held that petitioners' emotional distress claims were preempted insofar as they claimed that GM and the Union caused them distress by such actions as proposing the elimination of the flow rights under the Bridge Agreement, withholding information from the workers, failing to consider the interests of those workers, and not permitting them fully to participate in the ratification process. But, in the district court's view, petitioners' emotional distress claims were not preempted insofar as they complained of the respondents' *conduct* in taking those actions. *Id.* at 26a-33a.

The court of appeals held that all of petitioners' claims were preempted and remanded with instructions to dismiss the entire complaint. Pet. App. 4. The court of appeals began its analysis with a careful review of this Court's Section 301 preemption decisions. *Id.* at 6-7, 11-14. The court recognized that "Section 301 preemption governs claims either founded directly on rights created by collective bargaining agreements or 'substantially dependent on analysis of a collective-bargaining agreement.' " *Id.* at 13, quoting *Caterpillar Inc.* v. *Williams*, 482 U.S. 386, 394 (1987). If analysis of petitioners' tort claims is "inextricably intertwined with consideration of the terms of" the collective-bargaining agreements (*Allis-Chalmers Corp.* v. *Lueck*, 471 U.S. 202, 213 (1985)), those claims are preempted by Section 301. Pet. App. 6-7, 17, 21-22. The court of appeals then considered each of petitioners' claims in turn and conducted the essentially fact-bound analysis of whether those claims were "substantially dependent on" or "inextricably intertwined with"

the terms of the collective-bargaining agreements between GM and the Union.

Turning first to petitioners' fraud claims, the court of appeals noted that those allegations were "not very clear." Pet. App. 16. The court identified two separate contentions that petitioners appeared to be making: that Local 801's president had fraudulently induced petitioners to ratify the 1979 Delco Local Agreement by concealing or misrepresenting its effect on their transfer rights, and that following ratification the president had made fraudulent misrepresentations regarding their transfer rights. The court of appeals held that both of those fraud claims were preempted. Pet. App. 14-19. The court held that the first claim was preempted because it would require analysis of the Bridge Agreement and the subsequent agreements to determine what rights they conferred and what rights they eliminated. *Id.* at 14-15. In addition, because the rights at issue in that claim were " 'created by collective-bargaining agreements,' " the claim was completely preempted. *Id.* at 15 (quoting *Caterpillar* at 394).

As to petitioners' second fraud claim, the court of appeals could not tell whether petitioners were alleging that after the ratification the Union president affirmatively misrepresented the terms of the 1979 agreement and told them that it did not affect their rights under the Bridge Agreement, or alternatively that he told them that "their purported entitlement to jobs at the Chevrolet plant would be respected, despite the 1979 collective-bargaining agreement." Pet. App. 16. The court held that in either event the claims were preempted. The former contention was preempted because it would require the court to ascertain petitioners' rights under the Bridge Agreement and the 1979 Delco contract, and to determine the accuracy of the Union president's alleged representations about the content of those agreements. *Id.* at 17. This fraud claim was "so intertwined with the terms of the collective-bargaining agreements * * * that they may not be separated." *Ibid.*, citing *Lueck*, 471 U.S. at 213.

Under the alternative interpretation of petitioners' claim (that they were told that the flow arrangement would remain in effect despite the 1979 agreement), the court of appeals held that the claim was preempted because the alleged job-entitlements were created and defined by the Bridge Agreement. Pet. App. 17-18. Adjudication of this claim once again would require "extensive" interpretation to determine "what plaintiffs' 'bridge agreement' rights were and whether they are being violated by the new arrangements." *Id.* at 18.

The court of appeals concluded that in their fraud claims petitioners were asking the court to find that Bridge Agreement rights terminated in the 1979 Local Agreements were "reborn under state law." Pet. App. 18. That would "create a situation in which rights extinguished under federal labor law were vital under state law. The purpose of the doctrine of complete preemption is to prevent one set of rights and obligations from issuing from a collective-bargaining agreement under federal law while contradictory rights and obligations flowed from state law. * * * Plaintiffs cannot be permitted to revive rights deemed extinguished under federal labor law by relying on state common law." *Id.* at 17-18.

The court of appeals next examined petitioners' tortious interference with contract claims, and held them to be likewise fully preempted. Pet. App. at 19-20. The court rejected petitioners' argument that their claims were like those raised by the plaintiffs in *Caterpillar*. In *Caterpillar*, the court noted, "the alleged contract between the plaintiffs and the employe[r] was independent of any collective-agreement." *Id.* at 19. But in this case, the rights claimed by petitioners were the "seniority rights" under the Bridge Agreement. *Id.* at 20. Petitioners' claims would therefore necessarily involve analysis of the terms of the Bridge Agreement. *Ibid.*

Finally, the court of appeals considered petitioners' emotional distress claims. Pet. App. 21-26. Analogizing to this Court's decision in *Farmer* v. *Carpenters*, 430 U.S. 290 (1977), the court acknowledged that it is "theoretically

possible" that the conduct of union leaders in a case like this one might be so outrageous that state tort actions would be permitted. Pet. App. 25. But "no outrageous conduct has been alleged in this case"; rather, petitioners alleged only that "material information * * * was withheld from them." Such a claim "goes to the quality of their union representation and the fairness of their employer's labor practices, issues central to the concerns of federal labor law." *Ibid.* In these circumstances, absent "specific allegations" that the union or GM engaged in "outrageous conduct," "the state interest in adjudicating plaintiffs' emotional distress claims [is] too insubstantial to defeat complete preemption." *Ibid.*

REASONS FOR DENYING THE PETITION

Having failed to file their complaint alleging violations of the federal labor laws within the prescribed statute of limitations period, petitioners now seek to recast claims that arise out of and require interpretation of collective-bargaining agreements as state law violations. The Demand for Relief in petitioners' complaint makes it crystal clear that what they are seeking is relief from alleged violations of several collective-bargaining agreements. This Court, however, has repeatedly protected the comprehensive federal regulatory scheme constructed by the Labor Management Relations Act from undue interference by private actions under state law that seek to enforce claims under collective-bargaining agreements. In doing so, it has established workable preemption standards which require the courts to undertake just the kind of fact-intensive, "case-by-case" analysis carried out by the court of appeals. *Lueck*, 471 U.S. at 220. The courts below conscientiously applied those standards and reached the correct result.

Relying primarily on a case (*Wells* v. *General Motors Corp.*) they did not even cite in their court of appeals briefs, petitioners contend that there is a conflict among the circuits touching the issues in this case. But even a

cursory review of *Wells* makes it clear that the Fifth Circuit applied the same legal standard to very different facts and therefore reached a different result. There is absolutely no reason to believe that the Fifth Circuit would disagree with the Sixth Circuit if presented with the facts of this case.

Moreover, even were this Court inclined to elaborate further on the standards for Section 301 preemption, this case would provide an unsuitable vehicle. Petitioners' state law complaint is "prolix," "vague," and "very difficult to understand" (Pet. App. 7), and it is the incoherence of that complaint and petitioners' formless and shifting characterizations of their claims that have fueled nearly a decade of litigation. It is a struggle to penetrate the morass petitioners have created to ascertain a coherent set of claims. Once that is done, it becomes clear that this is an easy case, squarely preempted because it lies at the very heart of federal labor law concerns.

I. THE COURTS OF APPEALS HAVE CONSISTENTLY AND CORRECTLY APPLIED THE SECTION 301 PREEMPTION ANALYSIS MANDATED BY THIS COURT'S DECISIONS TO STATE LAW FRAUD AND TORTIOUS INTERFERENCE CLAIMS.

This Court's jurisprudence on the interpretation and application of Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, is well developed. Section 301(a) creates federal jurisdiction over "[s]uits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce." This statute is not merely jurisdictional, but also "expresses a federal policy that federal courts should enforce [collective-bargaining] agreements" and that "the substantive law to apply in suits under § 301(a) is federal law, which the courts must fashion from the policy of our national labor laws." *Textile Workers* v. *Lincoln Mills*, 353 U.S. 448, 455, 456 (1957).

This Court has emphasized the necessity that "substantive principles of federal labor law * * * be paramount in the area covered by the statute." *Teamsters Local* v. *Lucas Flour Co.*, 369 U.S. 95, 103 (1962). Disputes about the interpretation of collective-bargaining agreements cannot be left to state law because "the subject matter of § 301(a) 'is peculiarly one that calls for uniform law.' " *Ibid.* The Court has explained that "[t]he possibility that individual contract terms might have different meanings under state and federal law would inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements." *Ibid.* Indeed, the "pre-emptive force of § 301 is so powerful as to displace entirely any state cause of action" that explicitly or implicitly contends that an employer or bargaining agent breached its obligations under a labor contract. *Franchise Tax Bd.* v. *Laborers Vacation Trust*, 463 U.S. 1, 23 (1983).

This Court has elaborated on these principles no fewer than five times in recent years, beginning in *Allis-Chalmers Corp.* v. *Lueck*, 471 U.S. 202 (1985). In *Lueck* an employee subject to a labor contract filed a state law tort suit contending that his employer in bad faith failed to make disability insurance payments under a union-negotiated disability plan. The Court held this action pre-empted, observing that "[i]f the policies that animate § 301 are to be given their proper range, * * * the pre-emptive effect of § 301 must extend beyond suits alleging contract violations." *Id.* at 210. The court instructed (*id.* at 211) that

> questions relating to what the parties to a labor agreement agreed, and what legal consequences were intended to flow from breaches of that agreement, must be resolved by reference to uniform federal law, whether such questions arise in the context of a suit for breach of contract or in a suit alleging liability in tort.

Otherwise, "[t]he parties would be uncertain as to what they were binding themselves to" when they entered into a collective-bargaining agreement. *Ibid.* That would make

it "more difficult to reach agreement, and disputes as to the nature of the agreement would proliferate." *Ibid.*

The Court in *Lueck* enunciated a test for Section 301 preemption to deal with these concerns: a state law claim is preempted whenever it "is inextricably intertwined with consideration of the terms of the labor contract" (471 U.S. at 213), such that "any attempt to assess liability * * * inevitably will involve contract interpretation." *Id.* at 218. In other words, whenever "resolution of a state-law claim is substantially dependent upon analysis of the terms of an agreement made between the parties in a labor contract, that claim must either be treated as a § 301 claim or dismissed as pre-empted by federal labor-contract law." *Id.* at 220 (citation omitted).

This Court has reiterated the same concerns – and applied the same preemption test – in each of its subsequent rulings in this area. In *Electrical Workers* v. *Hechler*, 481 U.S. 851, 853 (1987), the Court held Section 301 preempted "a state-law tort claim that a union has breached its duty of care to provide a union member with a safe workplace." A court deciding that claim "would have to ascertain, first, whether the collective-bargaining agreement * * * placed an implied duty of care on the Union to ensure that [the employee] was provided a safe workplace, and, second, the nature and scope of that duty." *Id.* at 862. Since " 'questions of contract interpretation [underlay] any finding of tort liability' " the employee was "precluded from evading the pre-emptive force of § 301 by casting her claim as a state-law tort action." *Ibid.*

In *Caterpillar Inc.* v. *Williams*, 482 U.S. 386 (1987), certain breach of contract claims escaped preemption where they were based on allegations that an employer had entered into individual employment contracts with the plaintiff employees at a time when they were not members of a bargaining unit or covered by any collective-bargaining agreement. The employees claimed that Caterpillar had agreed that it "would provide employment opportunities for [them] at other facilities" if their workplace were closed. *Id.* at 389. The claim that the

employer had entered into and breached these individual employment contracts was "not substantially dependent upon interpretation" of a labor contract, because the claim neither "rel[ied] upon" a contract nor "address[ed] the relationship between the individual contracts and the collective agreement." *Id.* at 395.

Similarly, in *Lingle* v. *Norge Div. of Magic Chef, Inc.*, 486 U.S. 399 (1988), the issue was whether Section 301 preempted an employee's state law allegation that she had been discharged in retaliation for filing a worker's compensation claim. Although the employee was covered by a collective-bargaining agreement that required "just cause" for discharge, the Court held that her state retaliatory discharge claim was not preempted. The state law claim depended on a purely factual inquiry whether the plaintiff was discharged and whether the employer's motive for the discharge was retaliatory. Such an inquiry would "not turn on the meaning of any provision of a collective-bargaining agreement." *Id.* at 407. *Lingle* reiterated, however, that "judges can determine questions of state law involving labor-management relations only if such questions do not require construing collective-bargaining agreements." *Id.* at 411. Most recently, in *Steelworkers* v. *Rawson*, 495 U.S. 362, 369 (1990), this Court reaffirmed that a state tort suit is preempted when it is based on rights or duties "without existence independent of the collective-bargaining agreement."

Application of these Section 301 preemption standards requires close scrutiny of the plaintiff's allegations in each case. Over the last four years, this Court has denied petitions for certiorari in at least eleven cases involving the application of these standards to various state law claims.[3] That the courts of appeals in these

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[3] *White* v. *National Steel Corp.*, 938 F.2d 474 (4th Cir.), cert. denied, 112 S. Ct. 454 (1991); *McCormick* v. *AT&T Technologies*, 934 F.2d 531 (4th Cir. 1991), cert. denied, 112 S. Ct. 912 (1992); *Sluder* v. *UMW*, 892 F.2d 549 (7th Cir. 1989), cert. denied, 111 S.

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cases reached different results does not mean there is a conflict among the circuits that this Court has ignored. It simply reflects the fact that courts applying the proper preemption standards will reach different results when faced with different facts. There is certainly no reason for the Court to single out this case and to review the Sixth Circuit's conscientious analysis of petitioners' nearly unintelligible complaint.

It is particularly disingenuous for petitioners to pretend that this case is something other than a complaint bottomed on collective-bargaining agreements, when their original suit – which raised factual allegations substantially identical to those in the present suit – was expressly predicated on breach of collective-bargaining agreements within the meaning of Section 301. Petitioners' original suit was dismissed for untimeliness; but dilatoriness is surely not a justification for recycling a Section 301 claim as a state law claim and demanding application of divergent state law standards to construe and enforce the underlying collective-bargaining agreements.

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Ct. 45 (1990); *Wells* v. *General Motors Corp.*, 881 F.2d 166 (5th Cir. 1989), cert. denied, 495 U.S. 923 (1990); *Terwilliger* v. *Greyhound Lines*, 882 F.2d 1033 (6th Cir. 1989), cert. denied, 495 U.S. 946 (1990); *Berda* v. *CBS, Inc.*, 881 F.2d 20 (3d Cir. 1989), cert. denied, 493 U.S. 1062 (1990); *Smolarek* v. *Chrysler Corp.*, 879 F.2d 1326 (6th Cir.), cert. denied, 493 U.S. 992 (1989); *Richardson* v. *Steelworkers*, 864 F.2d 1162 (5th Cir.), cert. denied, 493 U.S. 803 (1989); *Utility Workers* v. *Southern California Edison Co.*, 852 F.2d 1083 (9th Cir. 1988), cert. denied, 489 U.S. 1078 (1989); *Local No. 57* v. *Bechtel Power Corp.*, 834 F.2d 884 (10th Cir. 1987), cert. denied, 486 U.S. 1055 (1988); *Paige* v. *Henry J. Kaiser Co.*, 826 F.2d 857 (9th Cir. 1987), cert. denied, 486 U.S. 1054 (1988).

A. The Sixth Circuit Faithfully And Correctly Applied The Section 301 Preemption Standards Enunciated In This Court's Decisions To Petitioners' Fraud And Tortious Interference Claims

The certiorari petition is premised on a series of misstatements about the decisions below. The linchpin of the petition is the repeated assertion that the court of appeals held that petitioners' state law fraud and tortious interference claims were preempted because they "merely *'relat[e]* to various collective bargaining agreements,' " and thereby applied a standard that this Court expressly rejected in *Lueck*, 471 U.S. at 220. Pet. 23. See also *id.* at 17, 48. This characterization of the test applied below is fallacious.[4] Both the court of appeals and the district court were meticulous in their adherence to the Section 301 preemption standards enunciated by this Court.

The court of appeals, after examining *Caterpillar* and this Court's other recent Section 301 preemption cases in great detail (Pet. App. 6-7, 11-14), held that petitioners'

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[4] Petitioners support each assertion that the court of appeals asked whether their claims were "related to" some labor contract with a citation to the court's opinion at Pet. App. 9. That citation is to part of a long quotation from the district court's decision, intended to "exemplif[y] the approach the [district] court took" to the problematic task of defining the claims contained in petitioners' "prolix and vague" complaint. *Id.* at 8. The cited quotation plays no operative role in the court of appeals' decision. Moreover, the district court was *not* applying a mere relationship standard at all, for the district court continued by saying that "[i]t would be impossible to determine whether the information provided to Plaintiffs by Defendants was false (or insufficient) without analyzing the terms of the various collective bargaining agreements." *Id.* at 9, quoting App., *infra*, 21a.

fraud claims were preempted because they were "substantially dependent on analysis" of the Bridge Agreement and the 1979 Delco contract (*id.* at 15) and "so intertwined with the terms of the collective-bargaining agreements present in the case that they may not be separated." *Id.* at 17. The court held that petitioners' tortious interference claims were preempted because they "necessarily involv[e] an analysis of" the collective-bargaining agreements between GM and the Union. *Id.* at 20. These same, well settled preemption principles guided the district court (see App., *infra*, 13a-17a), which properly asked as to each of petitioners' claims the question required by *Lueck* and *Caterpillar*: whether the claim was "substantially dependent" upon and "inextricably intertwined" with the construction of the terms of the various collective-bargaining agreements. See *id.* at 17a-32a.

A similar misrepresentation about the preemption standard applied below is implicit in petitioners' repeated but incomplete quotation of the court of appeals' statement that it "is immaterial" that the Union's alleged misrepresentations "took place outside the context of collective bargaining." Pet. 26, 46, quoting Pet. App. 17. The court of appeals recognized that state claims wholly independent of any collective-bargaining agreement are not preempted (see, *e.g.*, Pet. App. 13), and emphasized in the *very next sentence* of its opinion that "[t]he critical inquiry is whether a court adjudicating [petitioners' fraud] claim must determine rights arising under a collective bargaining agreement." *Id.* at 17.

Another equally baseless assertion is that the courts below held that petitioners' state law claims were preempted because respondents could have raised a defense grounded in federal labor law. Pet. 18-19, 58-59. The court of appeals gave this argument short shrift, pointing out that "the district court relied solely on the allegations on the face of the complaint" in holding petitioners' suit to be preempted. Pet. App. 14. The court of appeals' opinion likewise contains no suggestion that it looked to the nature of respondents' defenses. On the contrary, the

court was well aware of the rule in *Caterpillar* that federal defenses do not by themselves result in preemption of a state law claim (see *ibid.*), and its preemption analysis proceeded solely in terms of the elements of the claims presented on the face of the complaint. See, *e.g.*, *id.* at 17 (analyzing elements of fraud under Ohio law), 20 (contract claim), 25 (emotional distress claim).

Once the petition is stripped of these sorts of misrepresentations, it appears that petitioners' real complaint is simply that the court below erred in applying the standards set forth in *Lueck*, *Caterpillar* and this Court's other Section 301 preemption cases to the particular factual allegations underlying their tort claims. That argument is wholly without merit and would not warrant review by this Court in any event.

1. *Petitioners' Fraud Claims.* Petitioners apparently assert two categories of fraud claims. The first is based upon allegations that prior to the ratification of the 1979 Delco contract, the Local 801 president concealed and misrepresented the fact that the Bridge Agreement was not a part of the new Delco contract. Pet. 52. The second is based upon representations allegedly made by the Union president after the 1979 Delco contract had been ratified that petitioners retained flow rights under that contract and would be eligible for Chevrolet jobs based on the seniority accumulated under the Bridge Agreement. Pet. 50; Compl. ¶¶ 39-40. To make out these fraud claims under Ohio law, petitioners would have to show that respondents concealed or misrepresented a material fact, that they knew of or were indifferent to the concealment or misrepresentation and acted intending that the petitioners rely on it to their detriment, and that petitioners suffered damage as a consequence. See Pet. App. 14, 17 & Pet. 49-50, citing *Cohen* v. *Lamko, Inc.*, 462 N.E.2d 407 (Ohio 1984).

The claims that the Union concealed or misrepresented the effect of the 1979 Delco contract during the ratification process would embroil a court in a series of

"questions relating to what the parties to a labor agreement agreed, [which] must be resolved by reference to uniform federal law." *Lueck*, 471 U.S. at 211. To determine if the Union concealed or misrepresented the impact of the 1979 Delco contract on existing flow rights, a court would initially have to determine what petitioners' existing rights were. To do that, the court would first have to analyze the terms of the 1976 Delco agreement, including the Bridge Agreement. Among other things, the court would have to consider whether petitioners retained any rights under the Bridge Agreement after GM sold the Frigidaire Division; the Bridge Agreement only gave petitioners the right to transfer to jobs within the Frigidaire Division. App., *infra*, 37a. The court would then have to consider whether the termination of the Bridge Agreement by the Frigidaire contract of February 23, 1979 had an impact on any flow rights the Delco workers might have retained. After interpreting the 1976 Delco and 1979 Frigidaire contracts to see what rights Delco workers had at the time of the alleged misrepresentations, the court would then have to interpret the 1979 Delco contract in order to see what changes it worked. Only then could the truth or falsity of the representations alleged by petitioners be judged.

Finally, the Ohio law requirement that petitioners show damages would necessitate inquiry into what rights petitioners had lost in consequence of the alleged fraud. As the court of appeals noted (Pet. App. 14-15), that would require a court to compare petitioners' rights before and after ratification of the 1979 Delco contract.[5] In

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[5] This is not the sort of peripheral use of a labor contract "to determine the proper damages" for a state law violation that was sanctioned in *Lingle*, 486 U.S. at 413 n.12. This Court had in mind in *Lingle* that a "collective-bargaining agreement may * * * contain information such as rate of pay and other economic benefits that might be helpful" in fixing the amount of damages that should be awarded. *Ibid.* Here, a comparison

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short, an inquiry into the terms of the 1976 Delco contract and Bridge Agreement, the 1979 Frigidaire agreement cancelling the Bridge Agreement, and the 1979 Delco contract would be at the very heart of adjudication of this fraud claim.

A court adjudicating petitioners' second fraud claim would also have to engage in close analysis of collective-bargaining agreements. Although the petition describes in only vague terms the misrepresentations allegedly made by the Union after the ratification of the 1979 Delco contract (see Pet. 10), it is clear that each misrepresentation or concealment alleged in the complaint directly concerns the effect of the 1979 Delco contract on petitioners' seniority-based transfer rights. The Union allegedly "tr[ied] to keep secret the abrogation of the Bridge Agreement" by the 1979 contract. *Ibid.* Its president allegedly represented that rights acquired under the Bridge Agreement were "being fully recognized, preserved and perpetuated equitably and equally as to each [red-circled Delco worker] based on his order of Frigidaire seniority," and that petitioners "had nothing to worry about as they *** would *** participate fully in the Chevrolet jobs" in accordance with "the seniority acquired and accumulated at Frigidaire" – *i.e.*, under the Bridge Agreement. Compl. ¶ 40, App., *infra*, 56a-57a.

In order to determine if these alleged representations were false, or if the Union concealed some material fact, a court would have to interpret the 1979 Delco contract to see what rights it gave petitioners. In addition, a court would have to interpret various labor contracts simply in order to understand what was allegedly misrepresented by the Union. The content of the rights petitioners say

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of different labor contracts is necessary to determine whether petitioners suffered any damage at all as a consequence of the Union's alleged fraud, an essential element of a fraud claim under Ohio law.

they were told they retained under the 1979 contract are not to be found in the very general representations the Union is supposed to have made, but in the Bridge Agreement and the other collective-bargaining agreements that established and specified the flow rights to which those general representations referred. See Compl. ¶¶ 39-40. Then, because petitioners claim they were told they would have rights to transfer to *Chevrolet* jobs based on their Frigidaire seniority *(ibid.)*, the court would have to interpret the 1979 Frigidaire and Chevrolet agreements that gave Frigidaire workers rights to recall to Chevrolet. As if that were not enough, the requirement under Ohio law that a fraud plaintiff prove damages would also require the court to determine petitioners' rights under the agreement in effect before the 1979 Delco contract, as a baseline against which to measure the claims that the alleged misrepresentations and concealments harmed petitioners.

2. *Petitioners' Tortious Interference Claims.* Much of the same close analysis of collective-bargaining agreements would be essential to a resolution of petitioners' tortious interference with contract claims. These claims are based on the notion that the Union's alleged representations created a contract and that respondents tortiously interfered with petitioners' enjoyment of rights under that contract. Pet. 10-12, 55; Compl. ¶¶ 39-40, 74-80. Petitioners blithely assert that the Bridge Agreement is irrelevant to a determination whether a contract was created under Ohio law by the Union's alleged promises. Pet. 56-57. It is clear, however, as the court of appeals recognized (Pet. App. 20), that the terms of the alleged contract must derive from the Bridge Agreement and the other labor agreements that created and specified the flow rights that Frigidaire and Delco workers previously enjoyed. The promises the Union allegedly made were that petitioners would be entitled to jobs at the new Chevrolet plant in accordance with flow rights originally established by, and with the seniority accumulated under the terms of, the Bridge Agreement. Compl. ¶¶ 39-40. A

court adjudicating petitioners' tortious interference claims would thus have to analyze the Bridge Agreement to give content to the contract said to have been created by the Union's representations. Then, since the entitlement of those with Frigidaire seniority to jobs at Chevrolet was dependent on the 1979 Frigidaire and Chevrolet agreements, the court would necessarily have to interpret those agreements as well.

Petitioners' reliance on *Caterpillar* is misplaced. See Pet. 16, 54-55. The state breach of contract claims at issue in *Caterpillar* were founded on an employer's promises of permanent job security, made entirely separate from any collective agreements at a time when the plaintiffs were not even members of any bargaining unit. The terms of the alleged contracts were clear and wholly independent of any collective-bargaining agreements, so the state law claims did not "rely upon the collective agreement indirectly, nor * * * address the relationship between the individual contracts and the collective agreement." 482 U.S. at 395.

Here, petitioners assert that the Union represented that the "seniority acquired and accumulated at Frigidaire" under the Bridge Agreement continued to govern and that "accordingly" petitioners would "participate fully in the Chevrolet jobs." Compl. ¶ 40, App., *infra*, 56a-57a. Petitioners' claims thus "rely upon" the Bridge Agreement – and the 1979 Frigidaire and Chevrolet collective-bargaining agreements as well – to provide the terms of the contract they allege was created, and a court deciding petitioners' tortious interference claims would have to "address the relationship between the [alleged] individual contracts" and these three labor agreements. 482 U.S. at 395.

In sum, this is not a case in which it can plausibly be argued that state claims are in any sense independent of collective-bargaining agreements. Interpretation of a multiplicity of labor contracts would be essential to adjudication of petitioners' fraud and tortious interference claims, and would give rise to exactly that disruption of the

federal regulatory scheme that this court decried in *Lucas Flour*.

B. The Sixth Circuit's Decision That Petitioners' Fraud And Tortious Interference Claims Are Preempted Is Not In Conflict With Decisions Of Other Courts Of Appeals

Petitioners argue that the decision below is in conflict with *Wells* v. *General Motors Corp.*, 881 F.2d 166 (5th Cir. 1989), cert. denied, 495 U.S. 923 (1990) – a case they did not even cite in their court of appeals briefs. But the Sixth Circuit here and the Fifth Circuit in *Wells* both applied the preemption standards set out in this Court's precedents. Compare pp. 7-9, *supra*, with 881 F.2d at 172-173. They reached different results only because they faced very different factual circumstances.

In *Wells*, a collective-bargaining agreement known as the Voluntary Termination of Employment Plan (VTEP) provided that employees of GM's Packard Electric plant who agreed to resign their jobs would receive severance pay. 881 F.2d at 168. The VTEP was totally silent as to the future employment eligibility of workers who elected to resign under this plan. *Id.* at 174. Some employees who took advantage of the VTEP later reapplied for work at Packard but were allegedly told that they were ineligible for rehire. *Id.* at 168. These employees filed suit claiming state law fraud and misrepresentation, alleging that a GM representative had told them prior to their election of VTEP benefits that they could subsequently be rehired if new jobs were created, "although they would have to apply like everyone else." *Ibid.* The Fifth Circuit held that "[u]nder these narrow circumstances" the employees' state claims were not preempted (*id.* at 175), because the purported promise of eligibility for rehire was wholly independent of the VTEP. *Id.* at 173-175.

The difference between *Wells* and this case is striking. In *Wells*, the court of appeals held the rehire rights claimed by plaintiffs were not even remotely connected to

a collective-bargaining agreement. On the contrary, they were merely rights to apply for a job in the future "like everyone else" (881 F.2d at 168) – that is, on the same basis as any new applicant approaching GM for a job without benefit of any collectively-bargained seniority or other advantages. Indeed, the Fifth Circuit held that rehire rights are not even mandatory subjects of collective-bargaining. *Id.* at 169-170. In consequence, the Fifth Circuit held that plaintiffs' state law fraud claim was "a highly fact-bound one concerning what was said, or promised," by GM's representative (*id.* at 173), and that no term of the VTEP was relevant to the court's inquiry. *Id.* at 173-174.

In the present case, in contrast, a court adjudicating petitioners' fraud and tortious interference claims could not avoid interpreting various collective-bargaining agreements, as we have shown above. In particular, the flow rights at issue in this case were solely a creature of collective bargaining – and were mandatory subjects of bargaining. See *Master Slack Corp.*, 230 NLRB 1054, 1055 (1977), enforced, 618 F.2d 6 (6th Cir. 1980); *United States Gypsum Co.*, 94 NLRB 112, 114-115 (1951), modified in other respects, 206 F.2d 410 (5th Cir. 1953), cert. denied, 347 U.S. 912 (1954). Red-circled Frigidaire and Delco workers enjoyed seniority, transfer and bumping rights only because these were provided for in the Bridge Agreement, which created those rights and gave them precise content. Frigidaire seniority became a basis for recall rights to the Chevrolet Division solely by virtue of the 1979 Frigidaire and Chevrolet agreements. Petitioners must rely on the collectively-bargained rights created by these agreements to provide the operative terms of the seniority and flow rights they allege they were promised by the Union president. See Compl. ¶¶ 39-40. In contrast to *Wells*, interpretation of collective-bargaining agreements is inescapable in adjudicating petitioners' claims.

Petitioners' fleeting assertion of other conflicts is equally insubstantial. Pet. 26-28. Upon closer inspection, each allegedly conflicting decision can be seen to have

rested on the precise role that the collective-bargaining agreement would play in reaching a decision on the state law claims, given the specific facts in issue. In *Anderson* v. *Ford Motor Co.*, 803 F.2d 953 (8th Cir. 1986), cert. denied, 483 U.S. 1011 (1987), for example, Ford allegedly told plaintiffs before they were hired that they would be permanent employees and would not be bumped by employees who had preferential hiring rights pursuant to a collective-bargaining agreement. *Id.* at 955. Applying the *Lueck* test, the court of appeals held that state law fraud and breach of contract claims filed by the plaintiffs after they were displaced by preferential hirees were not preempted: the state claims were totally independent of any collective-bargaining agreement. *Id.* at 956-957. The right not to be bumped did not at all depend on a collective-bargaining agreement. Indeed, the representations alleged to have created that right were "made before the time [plaintiffs] became employees of [Ford], that is, before the time they were even covered by the collective bargaining agreement." *Id.* at 958. See also *Berda*, 881 F.2d 20 (no § 301 preemption of state claims based on pre-employment representation that plaintiff would not be laid off, where no labor contract would have to be interpreted to decide the claim); *Fox* v. *Parker Hannifin Corp.*, 914 F.2d 795, 801 n.5 (6th Cir. 1990) (individual contract rights predating or created after the expiration of a labor contract may give rise to viable state law claims).

In the present case, the seniority and flow rights allegedly represented by the Union to have survived the 1979 Delco agreement were those "acquired and accumulated at Frigidaire" under the Bridge Agreement, and which had been translated into an entitlement to Chevrolet jobs by virtue of the 1979 Frigidaire and Chevrolet agreements. Compl. ¶¶ 39-40. In other words, the very source of the rights represented to exist by Local 801's

president was a series of collective-bargaining agreements.[6]

Contrary to petitioners' assertion (Pet. 26-27) the court of appeals' decision does not conflict with *Karetnikova* v. *Trustees of Emerson College*, 725 F. Supp. 73 (D. Mass. 1989), or *Paradis* v. *United Technologies*, 672 F. Supp. 67 (D. Conn. 1987). In *Karetnikova*, the district court permitted a state law civil rights claim to proceed where a college had allegedly failed to grant plaintiff tenure because of her political views. As in *Lingle*, plaintiff's claim raised purely factual questions about whether the board's tenure decision was motivated by plaintiff's exercise of First Amendment rights and did not involve rights under any collective-bargaining agreement. 725 F. Supp. at 79-80. Moreover, the court held that those rights were "at least in part" beyond the scope of collective bargaining, like the rights in question in *Lingle* – but unlike the seniority and flow rights at issue in this case. *Id.* at 81-82.

Similarly, in *Paradis* the district court applied the *Lueck* standard to a state law fraud claim premised on an

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[6] Petitioners also cite *Hanks* v. *General Motors Corp.*, 906 F.2d 341 (8th Cir. 1990), *Anderson* v. *United Auto Workers*, 738 F. Supp. 441 (D. Kan. 1990), and a dissenting opinion in *McCormick*, 934 F.2d 531, as evidencing a conflict among the lower courts in the application of Section 301 preemption standards. Pet. 26-28. These cases do not involve fraud or tortious interference, but are primarily concerned with state law emotional distress claims. See pp. 27-29, *infra*. In *Milne Employees Ass'n* v. *Sun Carriers, Inc.*, 1991 U.S. App. LEXIS 27786 (9th Cir. 1991), also referred to by petitioners in passing (Pet. 48-49), the court of appeals held that state tortious interference claims were preempted, but that certain fraud claims were not. The decision was based on a careful analysis of plaintiffs' allegations and the elements of the state causes of action in light of the *Lueck* test. Unlike the flow rights at issue here, the fraud claims held not to be preempted in *Milne* did "not originate in or refer to rights and duties derived from the collective bargaining agreement" (*Milne* at *17).

allegation that an employer fired the plaintiff for prior drug use after representing that it would not do so. The court held that this fraud claim required no interpretation of a labor contract provision authorizing termination for just cause, because to succeed on the state claim the plaintiff "need only show that [his] termination was contrary to what defendant promised, not that it was unjust." 672 F. Supp. at 71. In the instant case, what the Union allegedly promised petitioners is the continuation of rights created by the Bridge Agreement, and the availability to red-circled Delco workers of jobs at the Chevrolet plant on the same terms enjoyed by red-circled Frigidaire workers under the 1979 Frigidaire and Chevrolet labor contracts. Moreover, the Union's alleged representations directly concerned the effect of yet another collective-bargaining agreement, the 1979 Delco contract. In this case, unlike *Paradis*, interpretation of collective-bargaining agreements would thus be central to any decision on petitioners' state law claims.

II. THE SIXTH CIRCUIT'S HOLDING THAT PETITIONERS' EMOTIONAL DISTRESS CLAIMS ARE PREEMPTED WAS CORRECT AND CONSISTENT WITH DECISIONS OF OTHER COURTS.

The fourth count of petitioners' complaint alleged that GM and the Union tortiously caused them emotional distress. Compl. ¶¶ 81-83, 89, App., *infra*, 63a-64a. Petitioners agree (Pet. 60-62) that to succeed on this cause of action under Ohio law they would have to prove that respondents engaged in "extreme and outrageous" conduct which caused them emotional distress. Pet. App. 21, quoting *Yeager* v. *Local Union 20*, 453 N.E.2d 666, 671 (Ohio 1983).

The factual allegations upon which this count is grounded are particularly murky. The district court, believing it had considered "each of the possible [emotional distress] claims" stated in the complaint (App., *infra*, 27a), thought petitioners were alleging that GM and

the Union acted outrageously in proposing, presenting, and urging adoption of the February 23, 1979 Frigidaire contract and the September 18, 1979 Memorandum of Agreement that reaffirmed that contract. *Id.* at 27a-32a. In the court of appeals, and again here, petitioners suggest in addition that the Union acted outrageously in concealing the fact that the 1979 Delco agreement "omitted" and "abandon[ed]" the Bridge Agreement. Pet. 9. Finally, to confuse matters further, petitioners relied below (Br. 33-34) and in their Petition (Pet. 60) on *Farmer* v. *Carpenters*, 430 U.S. 290 (1977) – a *Garmon* preemption case concerning the preemptive effect on state emotional distress claims of the NLRB's primary jurisdiction over unfair labor practice complaints. Section 301 preemption was not even an issue in *Farmer*. *Id.* at 295 & n.5.

Under *Lueck*, petitioners' emotional distress claims are plainly preempted insofar as they are based on alleged concealment or misrepresentations about the effect of the collective-bargaining agreements. Compl. ¶¶ 25, 27-28, 31, 35; Pet. 9. As the district court noted, the outrageousness of that alleged conduct "simply cannot be judged in a vacuum," but would require the court to "analyz[e] how the terms of the collective bargaining agreements were changed." App., *infra*, 28a. As we have shown, that would mean interpreting the Bridge Agreement and the 1979 Frigidaire, Delco and Chevrolet contracts. Insofar as petitioners were alleging that the Union failed to notify them and to allow them to participate in the ratification of the 1979 *Frigidaire* agreement, that would not only require careful examination of the various collective-bargaining agreements, but also interpretation of the Union constitution and by-laws and application of the LMRDA to determine which employees were entitled to participate in the ratification.

The court of appeals – at petitioners' invitation (see Br. 33-34; Pet. App. 22) – took a different approach to determining whether petitioners' emotional distress claims are preempted, analogizing the Section 301 inquiry

to that set out in *Farmer*. *Farmer* held that because the states have a substantial interest in protecting their citizens from tortious infliction of emotional distress (430 U.S. at 304), only claims that pose "a realistic threat of interference with the federal regulatory scheme" are preempted by reason of the NLRB's primary jurisdiction over union discrimination complaints. *Id.* at 305. By analogy to *Farmer*, the court of appeals acknowledged that a properly-pleaded claim of outrageous conduct in a case similar to this one might escape preemption. Pet. App. 25. But because petitioners made no "specific allegations of outrageous conduct," and instead merely alleged that GM and the Union concealed information about the 1979 collective-bargaining agreements – "issues central to the concerns of federal labor law" – petitioners' claims were preempted. Pet. App. 25.

Whatever the merits of the court of appeals' analogy to *Farmer*, it is clear that the decision below does not warrant this Court's review. The court of appeals determined that petitioners' claims are preempted because they failed specifically to allege any outrageous conduct. That is essentially a factual determination, and one as to which petitioners cite no conflicts among the circuits or other grounds that would warrant a grant of certiorari. The court of appeals' insistence that a plaintiff asserting an emotional distress claim allege some outrageous conduct is a reasonable way to ensure that state claims that would interfere with the federal regulatory scheme are not permitted to proceed. Moreover, the court's analysis led to precisely the result demanded by *Lueck*, and for the same ultimate reason – that in substance petitioners' claims are about the terms of collective-bargaining agreements.[7]

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[7] As the court of appeals noted (Pet. App. 21), under the law of Ohio a claim of tortious infliction of emotional distress requires allegations of conduct that is "extreme and outrageous." *Yeager*, 453 N.E.2d at 671. Here, the court of appeals, crediting all of the

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CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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well-pleaded facts in the complaint, found no "specific allegations of outrageous conduct." Pet. App. 25. Before attempting to reconcile federal labor law with state common law governing claims of outrageous conduct, this Court should await a case in which the elements of the state law cause of action are actually pleaded.

APPENDIX

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO WESTERN DIVISION

JOHN J. ADKINS, et al.,	:	
Plaintiffs,	:	**Case No. C-3-83-1088**
vs.		
GENERAL MOTORS CORPORATION, et al.,	:	
Defendants.	:	

DECISION AND ENTRY SUSTAINING MOTION OF DEFENDANTS FOR SUMMARY JUDGMENT ON THOSE CLAIMS PREVIOUSLY DEEMED PREEMPTED BY § 301 OF THE LABOR MANAGEMENT RELATIONS ACT (DOC. #43 AND DOC. #48); JUDGMENT TO BE ENTERED IN FAVOR OF DEFENDANTS AND AGAINST PLAINTIFFS ON SAID CLAIMS SET FORTH IN COUNTS TWO AND THREE OF PLAINTIFFS' COMPLAINT AND ¶¶ 25, 27, 28, 35 AND THAT PORTION OF ¶ 31 RELATING TO THE CIRCULATION OF INFORMATION SET FORTH IN COUNT FOUR OF PLAINTIFFS' COMPLAINT; THAT PORTION OF MOTION FOR SUMMARY JUDGMENT OF DEFENDANT GENERAL MOTORS SEEKING TO HAVE THIS COURT RECONSIDER ITS PRIOR RULING (DOC. #40), REMANDING TO STATE COURT ¶¶ 30, 33, 36 AND A PORTION OF ¶ 31, OVERRULED; ¶¶ 30, 33, 36 AND A PORTION OF ¶ 31 ORDERED REMANDED TO STATE COURT; TERMINATION ENTRY

[FILED January 24, 1990]

On August 16, 1988, this Court filed a Decision and Entry (Doc. #40) which, *inter alia*, granted the Defendants' previous Motions for Reconsideration and, in so doing, concluded that Counts Two and Three of the Plaintiffs' Complaint and that portion of Count Four which dealt with the circulation of certain information, to wit: that set forth in ¶¶ 25, 27, 28, 35 and a portion of ¶ 31, are preempted by § 301 of the Labor Management Relations Act ("LMRA") and, accordingly, would not be remanded to state court. Ruling further, this Court concluded that the Defendants' Motions for Reconsideration were overruled as they related to the remainder of Count Four of the Plaintiffs' Complaint (¶¶ 30, 33, 36 and a portion of ¶ 31). This Court ruled that those portions of Count Four, not preempted by the LMRA, would be remanded to state court. Finally, this Court concluded that those claims determined by this Court to be preempted by § 301 of the LMRA (i.e., those found in Count Two, Count Three, and that portion of Count Four related to ¶¶ 25, 27, 28, 35 and a portion of ¶ 31) might possibly be barred by the six-month statute of limitations established by § 10(b) of the National Labor Relations Act ("NLRA"), 29 U.S.C. § 160(b). The Court granted Defendants 20 days from the entry of said decision to file a properly documented motion for summary judgment to that effect.

The Defendants have filed such a Motion for Summary Judgment seeking a judgment in their favor and against the Plaintiffs on those claims set forth in the Plaintiffs' Complaint which this Court determined on August 16, 1988, to be preempted by § 301 of the LMRA (Count Two, Count Three and that portion of Count Four

relating to ¶¶ 25, 27, 28, 35 and a portion of ¶ 31). (Doc. #43 and Doc. #48). In addition, the Defendant General Motors Corporation has sought a ruling by this Court reconsidering that portion of its Decision of August 16, 1988, which ordered remanded to state court certain claims set forth in ¶¶ 30, 33, 36 and a portion of ¶ 31, as not preempted by § 301 of the LMRA. The moving Defendant would have this Court reconsider its prior Order of remand, retain those claims within the federal court's jurisdiction, pursuant to the principles of pendent jurisdiction, and, consequently, grant the moving Defendants' Motion for Summary Judgment on the grounds that the state law claims, previously deemed by this Court to be not preempted by § 301, are either barred by the applicable six-month statute of limitations or fail to state claims against the moving Defendant upon which relief can be granted.

Based upon the reasoning and citations of authority set forth in the memoranda filed by the moving Defendants in support of their Motion for Summary Judgment on those claims set forth in the Plaintiffs' Complaint previously deemed by this Court to be preempted by § 301 of the LMRA, i.e., Count Two, Count Three, and that portion of Count Four set forth in ¶¶ 25, 27, 28, 35 and a portion of ¶ 31, this Court deems said motions to be well taken and same are, therefore, sustained in their entirety.

In ruling as aforesaid, this Court makes the following, non-exclusive, observations:

1. Each of the claims of the Plaintiffs set forth in the aforesaid Count Two, Count Three and the above referenced paragraphs set forth in Count Four are barred by

the applicable six-month statute of limitations set forth in § 10(b) of the NLRA, as said statute has been interpreted by the United States Supreme Court in *Del Costello v. International Brotherhood of Teamsters*, 462 U.S. 151 (1983).

2. This Court has previously held, which holding has been affirmed by the United States Court of Appeals for the Sixth Circuit, that Plaintiffs' federal claims accrued in January, 1981, and were barred by the six-month statute of limitations found in § 10(b) of the NLRA. Accordingly, it is axiomatic that Plaintiffs' state claims that this Court has held to be preempted by § 301 of the LMRA, likewise, accrued in January, 1981, and are also barred by the aforesaid six-month statute of limitations. If federal claims are barred on statute of limitations grounds, it is nothing less than the exercise of common sense to conclude that claims properly removable, as preempted by federal law, must likewise be disposed of on the same statute of limitations grounds.

This Court will overrule that portion of the Motion of the Defendant General Motors Corporation seeking an Order of the Court reconsidering that portion of its August 16, 1988 (Doc. #40) Decision and Entry which ordered remanded to the state court that portion of the Plaintiffs' Complaint which was not preempted by § 301 of the LMRA, to wit: ¶¶ 30, 33, 36 and a portion of ¶ 31 as they relate to Count Four of the Plaintiffs' Complaint. Those paragraphs relating to Count Four of the Plaintiffs' Complaint will be remanded to the state court.

In ruling as aforesaid, this Court makes the following, non-exclusive, observations:

1. Since the Court has ordered the entering of summary judgment in favor of the Defendants and against the Plaintiffs, on all aspects of the Plaintiffs' state court filed claims which this Court has determined are preempted by § 301 of the LMRA, there are no longer federal claims pending upon which any purely state law claims could pend. In *Mine Workers v. Gibbs*, 383 U.S. 715, 726 (1966), the United States Supreme Court stated that "If the federal claims are dismissed before trial . . . the state claims should be dismissed as well." While this rule does not establish a mandatory rule to be applied inflexibly in all cases, *see Rosado v. Wyman*, 397 U.S. 397, 403-405 (1970), "[t]he statement simply recognizes that in the usual case in which all federal law claims are eliminated before trial, the balance of factors to be considered under the pendent jurisdiction doctrine – judicial economy, convenience, fairness and comity – will point toward declining to exercise jurisdiction over the remaining state law claims." *Carnegie-Mellon University v. Cohill*, 108 S. Ct. 614, 619 n.7 (1988).

2. Even were this Court to have the unfettered discretion to maintain jurisdiction over the purely state law claims, even without any federal law claims to which those state law claims could pend, this Court would decline to exercise said jurisdiction believing that matters of purely state law, particularly in the areas involved in the Plaintiffs' Complaint which deal with matters of state law which are undergoing a period of rapid evolution, must be decided by state courts.

WHEREFORE, based upon the aforesaid, this Court grants the Motions of the Defendants (Doc. #43, Doc. #48), seeking summary judgment in their favor and

against the Plaintiffs herein on the federal claims for relief (those state law claims deemed preempted by federal law) and, ruling further, overrules that portion of the Motion for Summary [Judgment] of the Defendant General Motors, seeking an Order of the Court reconsidering its prior decision and thus maintaining jurisdiction over the state law claims and rendering summary judgment thereon.

It is the Order of this Court that the Office of the Clerk of Courts prepare a Final Judgment Entry to the effect that:

1. Summary judgment is entered in favor of the Defendants and against the Plaintiffs herein, on all claims set forth by the Plaintiffs in Count Two, Count Three and ¶¶ 25, 27, 28, 35 and the portion of ¶ 31 relating to the circulation of information in Count Four of Plaintiffs' Complaint.

2. Those claims set forth in ¶¶ 30, 33, 36 and that portion of ¶ 31 relating to the denial of Plaintiffs' right to participate in the ratification vote, all set forth in the fourth count of the Plaintiffs' Complaint, having been deemed to be *not* preempted by § 301 of the LMRA, are ordered remanded to the Montgomery County Court of Common Pleas.

3. The captioned cause is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

WALTER HERBERT RICE
UNITED STATES DISTRICT JUDGE

John J. ADKINS, et al., Plaintiffs,

v.

GENERAL MOTORS CORPORATION, et al., Defendants.

No. C-3-83-1088.

United States District Court, S.D. Ohio, W.D.

Aug. 16, 1988.

DECISION AND ENTRY SUSTAINING IN PART AND OVERRULING IN PART THE MOTIONS OF DEFENDANT UNIONS (DOC. #21) AND DEFENDANT GENERAL MOTORS CORP. (DOC. #22) FOR RECONSIDERATION, AND, ACCORDINGLY, VACATING IN PART THE COURT'S DECISION AND ENTRY SUSTAINING IN PART, AND OVERRULING IN PART, PLAINTIFFS' MOTION TO REMAND (DOC. #9); DECISION AND ENTRY VACATING IN PART THE COURT'S DECISION AND ENTRY SUSTAINING THE MOTION OF DEFENDANT UNIONS FOR SUMMARY JUDGMENT (DOC. #19); DECISION AND ENTRY OVERRULING PLAINTIFFS' MOTION FOR COSTS (DOC. #11) IN ITS ENTIRETY; FURTHER PROCEDURES ORDERED OF THE DEFENDANTS.

RICE, District Judge.

This case is before the Court on the Motions of the Defendants (Doc. #21; Doc. #22) for Reconsideration of the Court's Decision and Entry sustaining in part, and overruling in part, the Motion to Remand (Doc. #9) and on the Motion of the Plaintiffs for Costs (Doc. #11). For the reasons briefly set forth below, the Defendants'

Motions for Reconsideration are sustained in part and overruled in part; the Court's Decision and Entry sustaining in part, and overruling in part, Plaintiffs' Motion to Remand (Doc. #9) is, accordingly, vacated in part; the Court's Decision and Entry sustaining the Motion of Defendant Unions for Summary Judgment (Doc. #19) is vacated in part; and the Motion of Plaintiffs for Costs (Doc. #11) is overruled in its entirety.

I. A PROCEDURAL BACKGROUND

An understanding of the procedural posture of this case requires a brief summary of litigation previously brought before this Court. In January, 1982, many of the Plaintiffs in the instant case filed suit in this Court against the same Defendants, namely, Defendant General Motors Corp. (GMC), Defendant International Union of Electrical, Radio and Machine Workers, AFL-CIO (IUE), and Defendant Local 801. *Adkins v. General Motors Corp.*, No. C-3-82-011 (S.D. Ohio Jan. 18, 1982). The Amended Complaints therein contained two counts.[1] Plaintiffs' advanced federal claims in the first count, alleging that the IUE and Local 801 violated their duty of fair representation, and that GMC breached a contract, with respect to the negotiation, adoption, and implementation of certain collective bargaining agreements. Count One thus presented a "hybrid" action under § 301 of the Labor Management Relations Act (LMRA), 29 U.S.C. § 185, and a

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[1] "[A] court may take judicial notice of its own record of another case between the same parties." *Harrington v. Vandalia-Butler Bd. of Educ.*, 649 F.2d 434, 441 (6th Cir. 1981).

claim under § 101(a)(1) of the Labor-Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. § 411(a)(1). Invoking the Court's pendent jurisdiction, Plaintiffs also set out four state claims in Count Two of the Complaints: tortious interference with contract; breach of contract; infliction of mental anguish; and loss of consortium.

GMC moved to dismiss the Complaint, pursuant to Fed.R.Civ.P. 12(b)(6), alleging that it failed to state a claim upon which relief could be granted. This Court sustained in part, and overruled in part, the Motion to Dismiss. *Adkins v. General Motors Corp.*, 556 F.Supp. 452 (S.D. Ohio 1983) (*Adkins I*). With respect to the federal claims, this Court held that same were sufficiently pleaded to survive a motion to dismiss, *except* that the spousal Plaintiffs had no standing to proceed. *Id.* at 456. With respect to the state claims, the Court considered two lines of defense raised by GMC: that the claims were preempted by federal labor statutes and, in any event, did not state a cause of action under Ohio law. *Id.* The Court held as follows: (1) the tortious interference with contract claim did not state a cause of action under Ohio law; (2) the breach of contract claim was preempted by LMRA § 301; (3) the infliction of mental distress claim did not state a cause of action under Ohio law, at least against GMC, and (4) the loss of consortium claim could go forward. *Id.* at 457-58.

Eventually, all Defendants moved for summary judgment, pursuant to Fed.R.Civ.P. 56, on the grounds that, *inter alia*, the federal claims were barred by the applicable statute of limitations. On April 15, 1983, this Court issued an opinion agreeing with Defendants' position, holding that the federal claims were barred by applying the six-month statute of limitations found in § 10(b) of the

National Labor Relations Act (NLRA), 29 U.S.C. § 160(b). *Adkins v. General Motors Corp.*, 573 F.Supp. 1188, 1201 (S.D. Ohio 1983), *aff'd*, 769 F.2d 330 (6th Cir. 1985) (*Adkins II*). In the same decision, this Court dismissed the pendent state claims without prejudice, subject to any further litigation Plaintiffs might wish to pursue in the state courts. *Id.* at 1201-02. Shortly thereafter, the Court entered judgment in favor of the Defendants. On July 18, 1985, following Plaintiffs' appeal of said judgment, the Sixth Circuit Court of Appeals affirmed this Court's judgment. *Adkins v. International Union of Electrical, Radio & Machine Workers*, 769 F.2d 330, 337 (6th Cir. 1985) (*Adkins III*).

Apparently following this Court's suggestion, some 817 Plaintiffs (most of whom were parties to the *Adkins* litigation in federal court) filed suit in Montgomery County Common Pleas Court on September 19, 1983 (No. 83-2596). The Complaint therein is of quite similar length and style to the Complaints filed in the federal litigation. While the *factual* contentions are quite similar, the state court Complaint does not refer to any federal statute. Instead, the Complaint sets out, in somewhat different form, the four state law causes of action set forth in the Complaints filed in federal court. Defendants (the same as those in the federal lawsuit) removed the suit (the instant action) to this Court in timely fashion, pursuant to 28 U.S.C. § 1441, contending that this Court would have original jurisdiction of the case under NLRA and the LMRA (Doc. #1). Plaintiffs then moved to remand the matter back to state court, pursuant to 28 U.S.C. § 1447 and Fed.R.Civ.P. 81(c), on the basis that the removal was improvidently granted.

On January 20, 1984, this Court filed a Decision and Entry sustaining in part and overruling in part the Plaintiffs' Motion to Remand (Doc. #9). *See Adkins v. General Motors Corp.*, 578 F.Supp. 315 (S.D. Ohio 1984) (*Adkins IV*). In *Adkins IV*, the Court concluded that "Plaintiffs have made assertions in their lengthy complaint (e.g., breaches of a collective bargaining agreement, and of the duty of fair representation) which inexorably lead to the conclusion that a 'hybrid' § 301 action is being pleaded." *Id.* at 318. The Court further concluded that certain other assertions within the Complaint could give rise to an action under LMRDA § 101(a)(1). *Id.* at 319. Accordingly, this Court overruled Plaintiffs' Motion to Remand "to the extent that the state court complaint can be read as advancing claims under LMRA § 301 or LMRDA § 101." *Id.* Plaintiffs' Motion to Remand was, however, sustained with regard to the remainder of Plaintiffs' claims on the theory that said claims were *not* preempted by § 301. Subsequently, on March 9, 1984, Defendant IUE and Defendant Local 801 filed a motion with this Court seeking an Order granting summary judgment in their favor upon all of Plaintiffs' *federal* claims. Subsequently, this action was stayed pending the outcome of Plaintiffs' appeal of the *Adkins II* decision (Doc. #15). Following the Sixth Circuit's affirmation of *Adkins II*, in a decision filed June 26, 1987, this Court sustained Defendant Union's Motion for Summary Judgment in its entirety on the grounds that Plaintiffs' federal claims were barred by the six-month statute of limitations contained in 29 U.S.C. § 160(b), and indicated that judgment would be granted in favor of all Defendants (including Defendant GMC) and against the Plaintiffs on the first and second causes of

action set forth in the Plaintiffs' Complaint (Doc. #19). In a letter attached to said decision, the Court noted that while Plaintiffs' federal claims were dismissed, the Court had granted Defendants leave to move for reconsideration of the Court's Decision remanding Plaintiffs' state claims (Doc. #20).

On July 8, 1987, Defendants filed the Motions for Reconsideration currently before the Court (Doc. #21; Doc. #22). In said motions, Defendants basically assert that in light of certain recent United States Supreme Court decisions on the issue of federal preemption under § 301 of the LMRA, the Court should re-examine its Decision and Entry sustaining in part and overruling in part Plaintiffs' Motion to Remand. Specifically, Defendants assert that Count Two of Plaintiffs' Complaint (which alleges misrepresentation on the part of Defendants), Count Three of Plaintiffs' Complaint (which alleges that Defendants tortiously interfered with Plaintiffs' contractual and/or business relationships), and Count Four of Plaintiffs' Complaint (which alleges that Defendants negligently and/or intentionally inflicted severe emotional distress upon Plaintiffs) are preempted by § 301 of the LMRA, and thus, are properly removable to this Court, and therefore, *not* remandable to the Montgomery County Court of Common Pleas.

At this point in time, there appears to be some confusion as to the status of Count Two of Plaintiffs' Complaint. Certain language within the Court's Decision and Entry sustaining in part and overruling in part, the Plaintiffs' Motion to Remand indicates that said motion was

sustained with regard to Count Two of Plaintiffs' Complaint. However, as previously noted, this Court's Decision and Entry sustaining the Motion of Defendant Unions for Summary Judgment (Doc. #19) indicates that judgment will be granted in favor of all Defendants and against the Plaintiffs on Count Two of Plaintiffs' Complaint. In order to alleviate any confusion, the Court hereby vacates its Decision and Entry sustaining the Motion of Defendant Unions for Summary Judgment as it relates to Count Two of Plaintiffs' Complaint. In this Decision, the Court will re-examine the propriety of removing Count Two, Count Three, and Count Four of Plaintiffs' Complaint from the Montgomery County Common Pleas Court.

II. THE PROPRIETY OF REMOVAL

A. *Preemption and § 301 of the LMRA*

Before discussing the specific claims which Defendants assert are preempted by federal law, the Court finds it necessary to provide a brief overview of the applicable law. The Court notes that since its original decision on Plaintiffs' Motion to Remand, the Supreme Court has handed down four decisions which significantly clarify when claims brought under state law are preempted by federal labor-contract law.

The first in the quartet of cases analyzing the preemptive effect of § 301 of the LMRA was *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 105 S.Ct. 1904, 85 L.Ed.2d 206 (1985). In *Allis-Chalmers Corp.*, the Supreme Court held that "§ 301 of the Labor Management Relations Act pre-

empts a state-law tort action for bad-faith delay in making disability-benefit payments due under a collective-bargaining agreement." *Id.* at 208. In so doing, the Supreme Court noted that "[i]f the policies that animate § 301 are to be given their proper range . . . the pre-emptive effect of § 301 must extend *beyond* suits alleging contract violations." *Id.* at 210 (emphasis added). "[Q]uestions relating to what the parties to a labor agreement agreed, and what legal consequences were intended to flow from breaches of that agreement, must be resolved by reference to uniform federal law, whether such questions arise in the context of a suit for breach of contract or in a suit alleging liability in tort." *Id.* at 211. In determining whether a state-law claim is in fact preempted by federal labor law, the key question which must be answered is "whether evaluation of the tort claim is inextricably intertwined with consideration of the terms of the labor contract." *Id.* at 213. "When resolution of a state-law claim is substantially dependent upon analysis of the terms of an agreement made between the parties in a labor contract, that claim must either be treated as a § 301 claim, *see Avco Corp. v. Aero Lodge 735*, 390 U.S. 557, 88 S.Ct. 1235, 20 L.Ed.2d 126 (1968), or dismissed as preempted by federal labor contract law." *Id.* at 220. Thus, in the case at bar, if it is impossible to consider one of Plaintiffs' claims, without analyzing the terms of one or more of the collective bargaining agreements, said claim must be treated as preempted by § 301.

The Court next dealt with the issue of preemption under § 301 in the case of *International Bhd. of Elec. Workers v. Hechler*, 481 U.S. 851, 107 S.Ct. 2161, 95 L.Ed.2d 791 (1987). In *Hechler*, the plaintiff, who had been injured

in the course of her employment, asserted that the defendant union had negligently breached its "duty to insure that . . . [plaintiff] 'was provided safety in her work place and a safe work place' and to insure that . . . [plaintiff] 'would not be required or allowed to take undue risks in the performance of her duties which were not commensurate with her training and experience.' " *Id.* 107 S.Ct. at 2164. Plaintiff admitted that the "nature and scope" of said duty was dependent upon the terms of the collective bargaining agreement between her union and her employer. *Id.* In concluding that the plaintiff's negligence claim was in fact preempted by § 301, the Supreme Court noted that the defendant union's tort liability could not be determined without considering "whether the collective-bargaining agreement in fact placed an implied duty of care on the Union . . . . " *Id.* 107 S.Ct. at 2168. The Supreme Court found that the plaintiff's negligence claim *was* preempted because any consideration of said claim would have required interpretation of the collective bargaining agreement and there is a "need for federal uniformity in the interpretation of contract terms. . . . " *Id.*

The Supreme Court once again dealt with the preemptive force of § 301 in the case of *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 107 S.Ct. 2425, 96 L.Ed.2d 318 (1987). In *Caterpillar*, the Supreme Court concluded that as the plaintiff-employees' claims of breach of contract were founded upon an independent agreement, no interpretation of the collective bargaining agreement was required, and thus, said claims were *not* preempted by § 301. *Id.* 107 S.Ct. at 2431. Although the Supreme Court found there to be no preemption in *Caterpillar*, it once again emphasized that "[s]ection 301 governs claims

founded directly on rights created by collective-bargaining agreements, *and also* claims 'substantially dependent on analysis of a collective-bargaining agreement.' " *Id.* (quoting *Electrical Workers v. Hechler*, 481 U.S. 851, 107 S.Ct. 2161, 2166-67, n. 3, 95 L.Ed.2d 791 (1987)).

Finally, the Court once again examined the issue of preemption under § 301 in the recent case of *Lingle v. Norge Division of Magic Chef, Inc.*, ___ U.S. ___, 108 S.Ct. 1877, 100 L.Ed.2d 410 (1988). In *Lingle*, the Supreme Court found that the plaintiff's state law claim for retaliatory discharge was *not* preempted by § 301, despite the fact that the plaintiff's collective bargaining agreement also provided plaintiff with a contractual remedy for wrongful discharge. The Supreme Court concluded that the plaintiff's state-law claim was " 'independent' of the collective-bargaining agreement in the sense of 'independent' that matters for section 301 pre-emption purposes: resolution of the state-law claim . . . [did] not require construing the collective-bargaining agreement." *Id.* 108 S.Ct. at 1882. In other words, the Supreme Court concluded that the state claim did not turn "on the interpretation of a collective bargaining agreement for its application." *Id.* 108 S.Ct. at 1882 n. 7. Basically, the Court concluded that even in the absence of a collective bargaining agreement, the Plaintiff would have had the same right to be free from wrongful discharge. Resolution of the state-law claim simply did not require any interpretation of the collective bargaining agreement.

Based upon all of the foregoing, the Court concludes that in the case at bar, it cannot simply rely upon the fact that Plaintiff's claims are couched in terms of state-law violations. The Court takes special note of the fact that

the above-discussed cases indicate that there are *two separate and distinct* bases for preemption. *First*, state claims involving rights which arise from a labor agreement are preempted by § 301. *Caterpillar*, 107 S.Ct. at 2431. *Second*, state claims which are "substantially dependent upon analysis of the terms of an agreement made between the parties in a labor contract" are preempted by § 301 regardless of whether or not said claims involve rights which arise from the agreement. *Allis-Chalmers Corp.*, 471 U.S. at 220, 105 S.Ct. at 1916. The evaluation of both types of claim "is inextricably intertwined with consideration of the terms of the labor contract." *Id.* at 213, 105 S.Ct. at 1912. Thus, in the case at bar, the Court must carefully consider whether any or all of Plaintiff's state law claims arise from *and/or* require the interpretation of any of the various collective bargaining agreements.

B. *Count Two: Misrepresentation*

In Count Two of their Complaint, Plaintiffs assert that certain "acts, omissions, and conduct of the Defendants, jointly and severally were wrongfully motivated misrepresentations of fact to the Plaintiffs, both constructively and actually, and were the result of the intentional and/or negligent conduct of the Defendants." (Doc. #1, Complaint, at ¶ 49). For the reasons briefly set forth below, the Court concludes that the evaluation of Count Two "is inextricably intertwined with consideration of the terms of the" collective bargaining agreements, and thus, is preempted by § 301. *Allis-Chalmers Corp.*, 471 U.S. at 213, 105 S.Ct. at 1912.

Under Ohio law, the following elements are required in order to establish fraud:

> "(a) a representation or, where there is a duty to disclose, concealment of a fact,
>
> "(b) which is material to the transaction at hand,
>
> "(c) made falsely, with knowledge of its falsity, or with such utter disregard and recklessness as to whether it is true or false that knowledge may be inferred,
>
> "(d) with intent of misleading another into relying upon it,
>
> "(e) justifiable reliance upon the representation or concealment, and
>
> "(f) a resulting injury proximately caused by the reliance."

Cohen v. Lamko, Inc., 10 Ohio St.3d 167, 462 N.E.2d 407, 409 (1984) (quoting *Friedland v. Lipman*, 68 Ohio App.2d 255, 429 N.E.2d 456 (Ct.App.1980) (syllabus, ¶ 1)). As virtually every fraudulent representation allegedly made by Defendants relates in one way or another to the terms of the various collective bargaining agreements, this Court must conclude that consideration of Plaintiffs' claim of fraudulent misrepresentation is "substantially dependent" upon the terms of said agreements.[2]

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[2] Paragraph 15 of Plaintiffs' Complaint states: The claimed breaches as well as the tortious interference with plaintiffs' rights, contracts and employment, the intentional and negligent infliction of emotional distress upon the plaintiffs, fraul [sic] and deceit, involve and concern said defendants wrongful conduct in:

(Continued on following page)

As noted in Plaintiffs' Memorandum in Opposition to Motion for Reconsideration, "Plaintiffs essentially claim

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(Continued from previous page)

(a) the implementation and enforcement of those agreements contained in a booklet entitled "Local Agreement between Frigidaire Division, General Motors Corporation and Local 801, International Union of Electrical, Radio & Machine Workers, AFL-CIO-CLC, December 10, 1976" including without limitation the "Bridge Agreement" dated December 10, 1976 contained at pages 46-52 of said booklet;

(b) the implementation and enforcement of the National Agreement of December 10, 1976;

(c) the negotiation, manner of adoption, adoption, implementation and enforcement of "Special Memorandum of Agreement Between General Motors Corporation and the International Union of Electrical, Radio & Machine Workers, AFL-CIO-CLC and its Local 801" dated February 23, 1979;

(d) the negotiation, manner of adoption, adoption, implementation and enforcement of that "Memorandum of Agreement" between GM and IUE and 801, dated February 23, 1979, which in part provides that all employees who become laid off from Frigidaire "will have the same layoff status as if they had been laid off from Delco Air Conditioning Division except," etc.;

(e) the implementation and enforcement of the National Agreement of September 18, 1979;

(f) the negotiation, manner of adoption, adoption, implementation and enforcement of those agreements contained in a booklet entitled "Local Agreement between Chevrolet-Moraine Engine Plant,

(Continued on following page)

that the negligent or intentional misrepresentations of each defendant induced Plaintiffs to enter the 1979 collective bargaining agreements." (Doc. #32, at 12). "Plaintiffs' claim that the Unions misrepresented GM's position in 1979 contract negotiations and thereby induced them to enter into the agreements." (Doc. #32, at 13). Plaintiffs specifically assert that "GM, IUE and 801 concerted presented, urged and proposed . . . [the] agreements and modifications [of February 23, 1979] in a manner designed to insure their adoption through the permitted withholding of information necessary to meaningfully inform the 2,000 that their 'bridge agreement' rights would be impaired by an affirmative ratification." (Doc.

(Continued from previous page)

> Chevrolet Motor Division, General Motors Corporation and Local 801, International Union of Electrical, Radio & Machine Workers, AFL-CIO-CLC, October 1, 1979," including without limitation the "Memorandum of Agreement" dated September 18, 1979 contained at pages 40-44 of said booklet; and
>
> (g) the negotiation, manner of adoption, adoption, implementation and enforcement of those agreements contained in a booklet entitled "Local Agreement between Chevrolet-Moraine Assembly Plant, Chevrolet Motor Division, General Motors Corporation and Local 801, International Union of Electrica [sic], Radio & Machine Workers, AFL-CIO-CLC, October 1, 1979," including without limitation the "Memorandum of Agreement" dated September 18, 1979 contained at pages 42-46 of said booklet.

(Doc. #1, Complaint, at ¶ 15). This statement alone indicates that there is at least some link between Plaintiffs' claims of fraudulent misrepresentation and the various collective bargaining agreements.

#1, Complaint, at ¶ 28). Plaintiffs further allege that "[i]n furtherance of . . . [the] concerted plan of GM, IUE and 801 to . . . substantially confine any consideration of . . . [the] modifications, GM, IUE and 801 concertedly confined the scope of any circulated information regarding the proposals to the explanation and discussion of only the benefits to be derived by the persons then employed by Frigidaire while wholly ignoring and being totally silent with respect to any consequent converse detriment whatsoever to the 2,000 [i.e. the plaintiffs]. . . ." (Doc. #1, Complaint, at ¶ 31). While not *every* claim of fraudulent misrepresentation would be preempted by § 301, based upon the foregoing allegations, the Court concludes that the *Plaintiffs'* claims of fraudulent misrepresentation *are* in fact preempted by § 301.

It cannot be disputed that Plaintiffs' claims of fraudulent misrepresentation all relate to the various collective bargaining agreements. It would be impossible to determine whether the information provided to Plaintiffs by Defendants was false (or insufficient) without analyzing the terms of the various collective bargaining agreements. Basically, the Plaintiffs are asserting that they were not informed (or were misinformed) as to the potential effects of ratification of the Special Memorandum of Understanding of February 23, 1979 and certain other agreements reached on February 23, 1979. The evaluation of whether or not Defendants' representations (and/or concealments) were false "is inextricably intertwined with consideration of the terms of the labor contract[s]." *Allis-Chalmers Corp.*, 471 U.S. at 213, 105 S.Ct. at 1912. *See generally Brown v. Keystone Consol. Indus., Inc.*, 680 F.Supp. 1212, 1218 (N.D. Ill. 1988).

Based upon the foregoing, the Court concludes that Plaintiffs' claims of fraudulent misrepresentation are preempted by § 301 of the LMRA. Accordingly, the Court concludes that Defendants' Motions for Reconsideration must be sustained as they relate to Count Two, and thus, that Plaintiffs' claims of fraudulent misrepresentation shall *not* be remanded to the Montgomery County Court of Common Pleas.

C. *Count Three: Tortious Interference With Contract or Business Relationship*

In Count Three of their Complaint, Plaintiffs assert that Defendants tortiously interfered with certain contractual and/or business relationships. For the reasons briefly set forth below, the Court concludes that the claim of tortious interference set forth in Count Three of Plaintiffs' Complaint is preempted by § 301 of the LMRA.

The Sixth Circuit has concluded that under Ohio law a claim for tortious interference arises when "one who, without a privilege to do so, induces or otherwise purposely causes a third party not to enter into, or continue, a business relationship with another, or perform a contract with another. . . . " *Heheman v. E.W. Scripps Co.*, 661 F.2d 1115, 1127 (1981) (quoting *Juhasz v. Quik Shops, Inc.*, 55 Ohio App.2d 51, 379 N.E.2d 235, 238 (1977)), *reh'g denied*, 668 F.2d 878 (6th Cir.), *cert. denied*, 456 U.S. 991, 102 S.Ct. 2272, 73 L.Ed.2d 1286 (1982). In Count Three of their Complaint, Plaintiffs assert that "[a]s a proximate result of the conduct of the defendant IUE, the defendant Local 801 breached its duties and agreements with the plaintiffs." (Doc. #1, Complaint, at ¶ 75). Plaintiffs further

assert that "[a]s a proximate result of the conduct of the defendant unions, the defendant General Motors did breach its expressed and implied agreements with the plaintiffs." (Doc. #1, Complaint, at ¶ 77). Finally, Plaintiffs assert that "[a]s a proximate result of the conduct of the defendant General Motors, the defendant unions did breach their contracts, fiduciary duties and business relationships with said plaintiffs." (Doc. #1, Complaint, at ¶ 79). The Court will consider each of these allegations seriatim.

Plaintiffs first assert that in order to improve its political position, Defendant IUE intentionally caused Defendant Local 801 to breach its fiduciary obligation to Plaintiffs. Basically, Plaintiffs assert that interpretation of the terms of the various collective bargaining agreements is not necessary to the determination of whether Defendant Local 801 breached duties owed to Plaintiffs under the Union Constitution or Charter. The Court cannot agree with said assertion. Even assuming *arguendo*, that Defendant Local 801's duty of fair representation does arise under an agreement other than the various collective bargaining agreements, the alleged breach of said duty is "inextricably intertwined with consideration of the terms of the [various] labor contract[s]." *Allis-Chalmers Corp.*, 471 U.S. at 213, 105 S.Ct. at 1912. Defendant Local 801 allegedly breached its fiduciary relationship by promoting changes in Plaintiffs' collective bargaining agreements which were allegedly detrimental to Plaintiffs and by allegedly concealing the fact that said changes were in fact detrimental. An analysis of whether or not Defendant Local 801 breached its duty of fair representation requires an analysis of the terms of the

collective bargaining agreements. Without such an analysis, it would be impossible to determine the impact of Defendant Local 801's actions upon the Plaintiffs. Accordingly, the Court concludes that Plaintiffs' claim that Defendant IUE tortiously interfered with the business and/or contractual relationship between Defendant Local 801 and Plaintiffs is preempted by § 301 of the LMRA.

Plaintiffs next assert that Defendant IUE and Defendant Local 801 intentionally caused Defendant GM to breach its duties to Plaintiffs, including those under "implied agreements" between Defendant GM and Plaintiffs. The Court concludes that Plaintiffs' assertion is without merit as there is *no* relationship between Defendant GM and Plaintiffs separate and apart from that created by the collective bargaining agreement. Plaintiffs' business relationship with Defendant GM is governed by the collective bargaining agreements. Even assuming *arguendo*, that Plaintiffs do possess some "implied" rights, said rights could only have arisen from the employment relationship, and said relationship arises from the various collective bargaining agreements.[3] Further, it must be remembered that Plaintiffs' chief complaint is that GM modified the terms of the collective bargaining agreements. Even assuming, *arguendo*, that some implied

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[3] The Court notes that this is *not* a situation in which the Plaintiffs assert that a duty created by statute has been breached. In situations in which a duty is created by statute as well as by contract, it is not necessary to refer to the contract in order to determine whether said duty has been breached. See *Lingle v. Norge Division of Magic Chef, Inc.*, ___ U.S. ___, 108 S.Ct. 1877, 100 L.Ed.2d 410 (1988).

agreement, separate and apart from the collective bargaining agreements, existed between Plaintiffs and Defendant GM, it would be impossible to determine whether said agreement was breached by the modification of the terms of the collective bargaining agreements without analyzing and interpreting the terms of the collective bargaining agreements. Based upon the foregoing, the Court concludes that Plaintiffs' claim that Defendant Unions tortiously interfered with the contractual and/or business relationship of Plaintiffs and Defendant GM "is inextricably intertwined with consideration of the terms of the [various] labor contract[s]." *Allis-Chalmers Corp.*, 471 U.S. at 213, 105 S.Ct. at 1912. Accordingly, the Court concludes that said claims are in fact preempted by § 301 of the LMRA, and thus, said claims shall *not* be remanded to state court.

Finally, the Plaintiffs assert that Defendant GM intentionally caused Defendant IUE and Defendant Local 801 to breach their duties to Plaintiffs, including "fiduciary duties and business relationships." Once again, the Plaintiffs argue that the Defendant Unions' duty to represent Plaintiffs fairly arises out of agreements other than the collective bargaining agreement. Even assuming *arguendo* that said argument is correct and that Defendant Unions do owe Plaintiffs duties which do not arise under the various collective bargaining agreements, the Court concludes that Plaintiffs' claims of tortious interference are "substantially dependent upon analysis of the terms" of the various labor contracts. *Id.* at 220, 105 S.Ct. at 1916. Plaintiffs basically assert that the Defendant Unions' actions in promoting the modification of the collective bargaining agreements breached Defendant Unions' duty

of fair representation. The propriety of Defendants' actions simply cannot be determined in the absence of an analysis of the terms of the collective bargaining agreements before and after the modification of February 23, 1979. Based upon the foregoing, the Court concludes that Plaintiffs' claims that Defendant GM tortiously interfered with the contractual and/or business relationship of Plaintiffs and Defendant Unions are "inextricably intertwined with consideration of the terms of the [various] labor contract[s]." *Id.* at 213, 105 S.Ct. at 1912. Accordingly, the Court concludes that said claims are preempted by § 301 of the LMRA.

Based upon all of the foregoing, the Court concludes that Defendants' Motions for Reconsideration must be sustained as they relate to Plaintiffs' claims under Count Three of Plaintiffs' Complaint, and thus, said claims shall *not* be remanded to the Montgomery County Court of Common Pleas.

D. *Count Four: Negligent or Intentional Infliction of Emotional Distress*

In Count Four of their Complaint, Plaintiffs assert that "the conduct of the defendants, jointly and severally, was negligent and/or intentional and/or reckless and proximately caused severe emotional distress to the plaintiffs." (Doc. #1, Complaint, at ¶ 89). For the reasons briefly set forth below, the Court concludes that Plaintiffs' claims of intentional and/or negligent infliction of emotional distress are *partially* preempted by § 301 of the LMRA.

Under Ohio law, "[o]ne who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm." *Yeager v. Local Union 20*, 6 Ohio St.3d 369, 453 N.E.2d 666, 671 (1983) (quoting Restatement (Second) of Torts § 46(1)(1965)). The Ohio courts further recognize that "[a] cause of action may be stated for the negligent infliction of serious emotional distress." *Paugh v. Hanks*, 6 Ohio St.3d 72, 451 N.E.2d 759, 761 (1983) (syllabus). In the interest of clarity, the Court will address each of the possible claims of negligent and/or intentional infliction of emotional distress set forth in Plaintiffs' Complaint individually.[4]

In ¶ 25 of their Complaint, Plaintiffs assert that Defendant GM, Defendant IUE and Defendant Local 801 "proposed modifications of the Local Seniority Agreement of Dec. 10, 1976 and of the Bridge Agreement of December 10, 1976, together with the urging that the same be adopted." If the Plaintiffs are claiming that in proposing this modification, Defendants caused Plaintiffs' emotional distress, the Court concludes that said claim is preempted by § 301 of the LMRA. Such a claim is "inextricably intertwined with consideration of the terms of the [various] labor contract[s]." *Allis-Chalmers Corp.*, 471 U.S. at 213, 105 S.Ct. at 1912. It would be impossible

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[4] The Court notes that it expresses no opinion as to whether Plaintiffs' assertions state a claim upon which relief can be granted under Ohio law. Instead, the Court seeks to determine whether or not Plaintiffs' claims of negligent and/or intentional infliction of emotional distress are preempted by § 301.

to determine whether the Defendants' conduct was outrageous and/or whether Defendants' actions inflicted emotional distress without considering the terms of the existing collective bargaining agreements and the proposed changes to said agreements.

In ¶ 27 of their Complaint, Plaintiffs assert that "[i]n working out and urging the agreements and modifications proposed on February 22, 1979, GM, IUE and 801 withheld from their course of decision-making any good faith consideration and weighing of the rights, interests, and job security considerations of and as to any of . . . [the Plaintiffs], and the . . . rational expectation of . . . [the Plaintiffs]. . . . " If the Plaintiffs are claiming that the Defendants' failure to consider the rights of Plaintiffs caused Plaintiffs emotional distress, the Court concludes that said claim is preempted by Section 301 of the LMRA for said claim is "inextricably intertwined with consideration of the terms of the [various] labor contract[s]." *Id.* at 213, 105 S.Ct. at 1912. Defendants' conduct simply cannot be judged in a vacuum. The emotional impact of Defendants' actions cannot be gauged without analyzing how the terms of the collective bargaining agreements were changed by the modification.

In ¶ 28 of their Complaint, Plaintiffs assert that the Defendants "concertedly presented, urged and proposed . . . [the] agreements and modifications in a manner designed to insure their adoption through the permitted withholding of information necessary to meaningfully inform the . . . [plaintiffs] that their 'bridge agreement' rights would be impaired by an affirmative ratification." If the Plaintiffs are claiming that this alleged

withholding of information by Defendants caused Plaintiffs emotional distress, the Court concludes that said claim must be preempted by § 301 of the LMRA as the evaluation of such a claim "is extricably intertwined with consideration of the terms of the [various] labor contract[s]." *Id.* It would be impossible to determine what information should have been provided by Defendants without considering the terms of the existing collective bargaining agreements and the proposed changes to said agreements.

In ¶ 30 of their Complaint, Plaintiffs assert that "[p]ursuant to the concerted plan of . . . [Defendants] to substantially confine any consideration of the . . . modifications . . . [to those working at Frigidaire] circulation of the February 21, 1979 issue of '801 News,' . . . was extensively made and accomplished among . . . [those working at Frigidaire] but not among . . . [the plaintiffs]. . . . [and that] such other written notification as occurred to give notice of the special membership meeting and voting . . . was substantially confined to . . . [those working at Frigidaire]." If the Plaintiffs are claiming that Defendants' alleged conduct in concealing the fact that a vote was to be held caused the Plaintiffs emotional distress, the Court concludes that said claim is *not* preempted by § 301 of the LMRA. Regardless of whether the proposed changes to the collective bargaining agreements would have a major or minor effect upon Plaintiffs, it could be argued that Defendants' alleged conduct in denying Plaintiffs the right to participate in decision making caused Plaintiffs emotional distress.

In ¶ 31 of their Complaint, Plaintiffs allege that Defendants circulated information concerning the

benefits of modification to Frigidaire employees but failed to circulate information concerning the potential detriments to Plaintiffs. If Plaintiffs are claiming that Defendants caused Plaintiffs emotional distress by failing to provide said information, the Court concludes that Plaintiff's claim is preempted by § 301 of the LMRA as it is "inextricably intertwined with consideration of the terms of the [various] labor contract[s]." *Id.* Once again, it is important to note that it is impossible to determine what information the Defendants should have provided without interpreting the terms of the then-existing cooperative bargaining agreements and the proposed changes to said agreements.

Paragraph 31 of Plaintiffs' Complaint also contains Plaintiffs' assertion that in order to enhance the probability that Plaintiffs would not participate in the ratification vote and to "diminish any comprehensive consideration" of the proposed changes, Defendants "inordinately curtailed the time lapse between the conclusion of their negotiations . . . and a ratification . . . ." If the Plaintiffs are claiming that the Defendants alleged conduct in denying Plaintiffs the right to participate in the ratification decision caused Plaintiffs emotional distress, the Court concludes that said claim is *not* preempted by § 301 of the LMRA. Once again, an analysis of the terms of the collective bargaining agreements and the proposed changes to said agreements is unnecessary to a determination as to whether Defendants' conduct could have caused Plaintiffs emotional distress.

In ¶ 33 of their Complaint, Plaintiffs assert that Plaintiffs were "effectively foreclosed and disenfranchised from any opportunity to persuasively urge their interests

and concerns, from any meaningful participation in either the consideration or vote upon . . . [the] proposed agreements and modifications. . . . " Once again, if the Plaintiffs are claiming that Defendants' conduct in denying them the right to attend the ratification meeting caused Plaintiffs emotional distress, the Court concludes that said claim is *not* preempted by § 301.

In ¶ 35 of their Complaint, Plaintiffs assert that the Defendants caused the submission for approval of the Memorandum of Agreement of September 18, 1979. If the Plaintiffs are claiming that the fact that Defendants proposed a modification of the collective bargaining agreement (and/or the fact that said proposal was adopted) caused Plaintiffs emotional distress, the Court concludes that said claim is preempted by § 301 of the LMRA for the evaluation of said claim "is inextricably intertwined with consideration of the terms of the [various] labor contract[s]." *Id.* It would be impossible to determine whether this change could in fact cause Plaintiffs' emotional distress without interpreting the terms of the collective bargaining agreements as they existed prior to the change and following the change.

In ¶ 36 of their Complaint, Plaintiffs assert that the ratification vote of September 18, 1979, took place "without any notification, access or opportunity having been afforded to any of [the Plaintiffs] . . . to meaningfully participate either in the consideration of such submission for approval or the vote conducted thereon." If the Plaintiffs are claiming that Defendants caused Plaintiffs' emotional distress by denying Plaintiffs the right to fully participate in decision making, the Court concludes that Plaintiffs' claim is *not* preempted by § 301 of the LMRA.

This claim would not require the interpretation of the various collective bargaining agreements.

In conclusion, there is a distinction between claims asserting that the terms of a modification or the failure of a company or Union to adequately disclose the terms of a proposed modification caused a worker emotional distress, and the claim that the failure to allow a worker to participate in decision making caused said worker emotional distress. The former claims simply cannot be analyzed without interpreting the terms of the existing and proposed collective bargaining agreements; same are, therefore, preempted by § 301 of the LMRA. The latter type of claim is not dependent upon an interpretation of the terms of the existing and proposed collective bargaining agreement; same are, therefore, not so pre-empted. Regardless of whether the impact of a particular vote is large or small, the fact that one is deliberately excluded from participating in said vote could be distressing and constitute emotional distress.

Based upon the foregoing, the Court concludes that ¶¶ 25, 27, 28, 35, and that portion of ¶ 31 relating to the circulation of information contain claims which are "inextricably intertwined with consideration of the terms of the [various] labor contract[s]", and thus are preempted by § 301 of the LMRA. Said claims will *not* be remanded to state court. The Court concludes that the remainder of the claims for negligent and/or intentional infliction of emotional distress contained within Plaintiffs' Complaint (i.e. those contained in ¶¶ 30, 33, 36 and that portion of ¶ 31 relating to the denial of Plaintiffs' right to participate in the ratification vote) are *not* preempted by § 301 and, accordingly, will be remanded to state court.

Accordingly, the Court concludes that Defendants' Motions for Reconsideration must be sustained in part and overruled in part as they relate to Count Four. Those claims contained in ¶¶ 25, 27, 28, 35, and that portion of ¶ 31 relating to the circulation of information shall *not* be remanded; the remainder of the claims contained in Count Four (as set forth above) shall be remanded.

III. CONCLUSION

In sum, the Court has concluded that Defendants' Motions for Reconsideration must be and hereby are sustained as they relate to Count Two and Count Three of Plaintiffs' Complaint and as they relate to ¶¶ 25, 27, 28, 35 and that portion of ¶ 31 relating to the circulation of information of Count Four of Plaintiffs' Complaint. Counts Two and Three and that portion of Count Four will *not* be remanded to state court. The Court has further concluded that Defendants' Motions for Reconsideration must be and hereby are overruled as they relate to the remainder of Count Four of Plaintiff's Complaint (¶¶ 30, 33, 36 and a portion of #31). Those portions of Count IV will be remanded to state court. In addition, the Court has concluded that the Court's Decision and Entry sustaining the Motion of Defendant Unions for Summary Judgment (Doc. #19) must be vacated as it relates to Count Two of Plaintiff's Complaint.

Finally, after due consideration, the Court has concluded that Plaintiffs' Motion for Costs (Doc. #11) must be and hereby is overruled in its entirety. This Court simply cannot conclude that an award of costs would be just in this case. The vast majority of Plaintiffs' claims

were properly removed. Basically, only three and one-half paragraphs out of Plaintiffs' entire Complaint were remanded. It would be unfair to penalize Defendants for their inability to sever said paragraphs from the remainder of the claims which were properly removed.

IV. FURTHER PROCEDURES ORDERED OF THE DEFENDANTS

The Defendants have asserted that those claims preempted by § 301 of the LMRA (i.e., those found in Count Two, Count Three and that portion of Count Four related to ¶¶ 25, 27, 28, 35 and a portion of ¶ 31) are barred by the six-month statute of limitations established by § 10(b) of the National Labor Relations Act, 29 U.S.C. § 160(b). The Court hereby grants Defendants twenty (20) days from the entry of this decision to file a properly documented motion for summary judgment to that effect.

The above stated motion for summary judgment will be briefed according to Local Rule of Court 4.0.2. Plaintiffs shall have twenty days from date of service to file any memoranda contra said motion. Any reply memoranda should be filed within seven days of the memoranda contra.

BRIDGE AGREEMENT

WHEREAS, Local 801 IUE-AFL-CIO-CLC and the International Union is the legal bargaining agent for employes of Frigidaire Division of General Motors as described in the certification from the National Labor Relations Board, and

WHEREAS, General Motors Corporation has determined that a product line formerly produced under the direction of Frigidaire Division is being produced by a new division resulting from an organization restructuring named Delco Air Conditioning Division, both of which divisions are hereinafter referred to as management, and

WHEREAS, management acknowledges the rights of Local 801 as a collective bargaining agent of certain employes of both Frigidaire Division and Delco Air Conditioning Division.

NOW THEREFORE, the management and the union by virtue of the execution of this document hereby agree to supplement, as hereinafter set forth, certain provisions of the Local Seniority Agreements and other local agreements at the Frigidaire Division and Delco Air Conditioning Division. The parties further agree to apply the representation provisions of the National Agreement between the IUE-AFL-CIO-CLC and General Motors Corporation to each division as hereinafter clarified by this agreement.

Seniority

I. A. All represented employes of Frigidaire Division on the active payroll as of the effective date of

this agreement will be identified for seniority purposes, by a process commonly referred to as "red-circling."

B. Such identified employes will be offered opportunities to move to clearance group job openings or to appropriate skilled trades assignments in the Delco Air Conditioning Division as these openings occur. Movement to these openings will be accomplished in seniority order providing the employe is capable of performing the clearance group or skilled trades job opening. If a "red-circled" Frigidaire Division employe declines the opportunity to move to an opening in Delco Air Conditioning, he or she will continue as a Frigidaire Division employe until such time as the last "red-circled" employe is scheduled for movement to Delco Air Conditioning Division, except that an employe who has declined such first opportunity to move may make one application, on forms provided by the Company, to be reinstated in proper seniority order for a subsequent opening. Employes who have declined previous moves will be offered one last chance to elect to move. If these employes elect not to move, they will no longer be entitled to a job in Delco Air Conditioning Division as a matter of right.

C. Such movements will continue until such time as all "red-circled" employes will have moved or declined to move.

D. After all "red-circled" employes have moved or declined to move, new openings in Delco Air Conditioning will be filled under the hiring practices established by Delco Air Conditioning Division.

II. A. All represented employes of Delco Air Conditioning Division having valid seniority dates at the time of the signing of this memorandum will also be identified by the "red-circling" procedure for seniority purposes.

B. In the case of possible future reductions in force in Delco Air Conditioning Division involving "red-circled" employes, they will be laid off in line with seniority and will be governed by existing agreements dealing with Supplemental Unemployment Benefits and applicable governmental regulations dealing with Unemployment Compensation.

C. In the event that such laid-off employe is a "red-circled" employe, he or she will have the right to apply for a job opening at Frigidaire Division. Such employes will be transferred to fill such openings, giving due consideration to the employe's capability to perform the work. If there are no openings, he or she may apply to displace a lesser seniority Frigidaire employe working in the clearance group or in appropriate skilled trades jobs at Frigidaire Division. The applicant must be capable of performing the work and must file the application to displace within thirty (30) days following the first day of layoff from Delco Air Conditioning Division or upon exhausting Unemployment Compensation or Supplemental Unemployment Benefits. Management will place the applicant in line with his or her seniority and capability within three weeks following receipt of the application. These provisions in no way supersede the employe's rights for Area Hiring consideration at other divisions.

D. The rate of pay for such employes will be at the regular appliance rate instead of the new-hire rate (25¢ less).

E. The Delco Air Conditioning "red-circled" employes will consist of those employes on the payroll in the division on the date this memorandum is signed.

F. Frigidaire Division "red-circled" employes who move to Delco Air Conditioning Division subsequent to the signing of this Agreement will also be accorded "red-circled" status in Delco Air Conditioning Division as limited in Paragraph H below.

G. The "red-circled" employes of Delco Air Conditioning Division will continue to have these rights described herein until such time as they retire, quit, or are otherwise terminated.

H. Frigidaire Division "red-circled" employes who move to Delco Air Conditioning Division subsequent to the signing of this agreement and are accorded "red-circled" status in Delco Air Conditioning will retain such status and the seniority benefits appertaining thereto until all Frigidaire "red-circled" employes have been transferred to Delco Air Conditioning Division as provided for under Paragraph I., B. of this agreement and 900 employes are newly hired by Delco Air Conditioning Division at which time "red-circled" status will cease to exist for such employes.

Representation

The International Union of Electrical Workers and its Local 801 have been the legally certified bargaining agent for certain production and maintenance workers in the

North Plant and the South Plant which now constitute the manufacturing facilities of Delco Air Conditioning Division. Additionally, they have also been the legally certified bargaining agent for certain production and maintenance workers in Plants #2 and #3 which now constitute the manufacturing facilities of Frigidaire Division. Each Division recognizes that the IUE and Local 801 continue to be the legally certified bargaining agent of employes in each of those plants falling under each Division's jurisdiction.

To maintain the integrity and efficiency of the bargaining relationship between Local 801 and both the Frigidaire and Delco Air Conditioning Division, the parties agree, for bargaining purposes, to apply the Representation Section of the GM-IUE National Agreement in each of the two divisions consistent with Paragraph 4 of the Special Agreement dated November 20, 1971 and Paragraph 1 of the Appliance Agreement dated November 19, 1973. Current implementation of the provisions of the Representation Section shall be under the President, Chairman and Executive Board of Local 801.

Realignment of zones and districts as required by the National Agreement will be completed within sixty (60) days following the effective date of this Bridge Agreement under the terms of the Memorandum of Understanding attached hereto.

In witness whereof, the parties hereto have caused their names to be subscribed by their duly authorized officers and representatives of this the 10th day of December, 1976.

LOCAL 801 – IUER-MW-AFL-CIO-CLC

Cassel V. Palmer
Wesley H. Garrison, Sr.
Clyde H. Johnson
William S. Jankovich
William R. Walters
Allen C. Robertson

DELCO AIR CONDITIONING DIVISION, GMC

David L. Drury
J.T. Reynolds
D.L. Webster
R.E. Burke
L.S. Benham

FRIGIDAIRE DIVISION, GMC

T.J. Tatham
T.H. Szromba, Jr.
J.W. Evans
T.D. Nichols
R. Kelhoffer
T.M. Hiegel

Subject to approvals by:

INTERNATIONAL UNION OF ELECTRICAL RADIO AND MACHINE WORKERS, AFL-CIO-CLC

William R. Pierce

Date: 2/16/77

GENERAL MOTORS CORPORATION

Edward A. Hodge

Date: 2/16/77

Special Memorandum of Understanding between General Motors Corporation and the International Union of Electrical, Radio & Machine Workers, AFL-CIO-CLC and its Local 801

WHEREAS, General Motors will cease household appliance production at its Frigidaire Division, and,

WHEREAS, it is anticipated that Chevrolet Motor Division will commence the manufacture of light trucks and engines in separate plants in the buildings where the Frigidaire operations were located and,

WHEREAS, there is a need for an orderly shutdown of operations under the direction of Frigidaire and an orderly startup of operations under the direction of Chevrolet and,

WHEREAS, employes of Frigidaire will continue to be employed to complete Frigidaire production requirements and, to the extent practicable, remove, clear and modify existing equipment and install new equipment under the direction of either Frigidaire or Chevrolet, and,

WHEREAS, the Union is the certified bargaining representative for the above mentioned employes, and,

WHEREAS, the Union and the Corporation recognize the desirability of clarifying the status of the employes to be laid off from Frigidaire Division,

NOW, THEREFORE, it is agreed that:

I. The Local Seniority Agreement dated December 10, 1976 is hereby cancelled and superseded by the provisions of this Agreement.

II. To provide for an orderly shutdown of Frigidaire operations, employes will be laid off as their job assignments are completed as determined by Management.

This procedure will be followed until all finished product inventory requirements are manufactured. At the time that only service parts requirements are scheduled for production, all Non-Interchangeable Occupational Group jobs and those Clearing Group jobs which are critical by reason of skill requirements, quality of product and/or product safety will be so identified. The critical Clearing Group jobs will be listed by mutual agreement prior to March 18, 1979, by a committee comprised of two members of the local union and two members of the local management. Employes assigned to those jobs will remain as long as they are needed. Within ten (10) working days following the completion of production of finished product inventory requirements, clearing group employes not designated as critical will be employed on a seniority order basis, provided they are capable of doing the jobs.

III. In the event Management has a need to recall any employes to perform productive operations prior to complete cessation of operations, recall will be accomplished in the following manner:

A. Non-Interchangeable Occupational Group jobs and those Clearing Group jobs which have been identified as critical in II above will be filled by

recalling employes who have last previously performed them. If no such employes are available, Management will recall the oldest seniority employes laid off provided they are capable of performing the work.

B. Clearing Group jobs which have not been identified as critical will be filled by recall of the oldest seniority employes laid off provided they are capable of performing the work.

IV. Any employe whose seniority at the Frigidaire Division is unbroken at the point at which a need for production and maintenance employes exists at the Chevrolet Motors Division plants shall have his seniority transferred to one of the Chevrolet – Dayton, Ohio plants at the time he commences work at such plant. The seniority of an employe which is so transferred shall be the full seniority he had on record at the Frigidaire Division.

V. An employe whose seniority is transferred to a Chevrolet – Dayton, Ohio plant from the Frigidaire Division, pursuant to Paragraph IV above, shall be offered employment in accordance with the following procedure:

A. An employe shall be offered employment at either the assembly plant or the engine manufacturing plant as openings in those respective plants occur on a job he is capable of performing in the judgment of Management in accordance with his seniority

standing at the former Frigidaire Division.

B. Employes who are offered employment at either of the Chevrolet plants and who refuse such employment at such plant, will have no further rights to employment at either Chevrolet plant, and their Frigidaire seniority shall be broken pursuant to Paragraph 34(d) of the National Agreement.

VI. By reason of the foregoing the Corporation will continue to recognize the Union as representative of the production and maintenance employes who will be employed in separate bargaining units by Chevrolet – Dayton in separate truck and engine manufacturing plants.

VII. This "Special Memorandum of Understanding" shall become effective February 23, 1979, and is negotiated to apply solely to the facts as they exist in the instant situation, and none of the provisions herein constitute a precedent for the disposition of future positions of the parties.

VIII. The parties agree that no liability of any kind shall result from the application of these provisions.

IX. This agreement is subject to ratification by Local Union 801, IUE, and will become effective on February 23, 1979, provided notice of ratification is received not later than February 23, 1979.

IN WITNESS WHEREOF, the parties hereto have caused their names to be subscribed by their duly authorized officers and representatives the year first above written.

INTERNATIONAL UNION, IUE
ss/ _____

GENERAL MOTORS CORPORATION
ss/ _____

LOCAL UNION 801, IUE-AFL-CIO-CLC
ss/ _____

FRIGIDAIRE DIVISION, GMC
ss/ _____

CHEVROLET MOTOR DIVISION, GMC
s/ _____

EXCERPTS FROM PETITIONERS' STATE COMPLAINT

* * *

15. The claimed breaches as well as the tortious interference with the plaintiffs rights, contracts and employment, the intentional and negligent infliction of emotional distress upon the plaintiffs, fraul and deceit, involve and concern said defendants' wrongful conduct in:

(a) the implementation and enforcement of those agreements contained in a booklet entitled "Local Agreement between Frigidaire Division, General Motors Corporation and Local 801, International Union of Electrical, Radio & Machine Workers, AFL-CIO-CLC, December 10, 1976" including without limitation the "Bridge Agreement" dated December 10, 1976 contained at pages 46-52 of said booklet;

(b) the implementation and enforcement of the National Agreement of December 10, 1976;

(c) the negotiation, manner of adoption, adoption, implementation and enforcement of "Special Memorandum of Agreement between General Motors Corporation and the International Union of Electrical, Radio & Machine Workers, AFL-CIO-CLC and its Local 801" dated February 23, 1979;

(d) the negotiation, manner of adoption, adoption, implementation and enforcement of that "Memorandum of Agreement" between GM and IUE and 801, dated February 23, 1979, which in part provides that all employees who become laid off from Frigidaire "will

have the same layoff status as if they had been laid off from Delco Air Conditioning Division except," etc.;

(e) the implementation and enforcement of the National Agreement of September 18, 1979;

(f) the negotiation, manner of adoption, adoption, implementation and enforcement of those agreements contained in a booklet entitled "Local Agreement between Chevrolet-Moraine Engine Plant, Chevrolet Motor Division, General Motors Corporation and Local 801, International Union of Electrical, Radio & Machine Workers, AFL-CIO-CLC, October 1, 1979," including without limitation the "Memorandum of Agreement" dated September 18, 1979 contained at pages 40-44 of said booklet; and

(g) the negotiation, manner of adoption, adoption, implementation and enforcement of those agreements contained in a booklet entitled "Local Agreement between Chevrolet-Moraine Assembly Plant, Chevrolet Motor Division, General Motors Corporation and Local 801, International Union of Electrica, Radio & Machine Workers, AFL-CIO-CLC, October 1, 1979," including without limitation the "Memorandum of Agreement" dated September 18, 1979 contained at pages 42-46 of said booklet.

16. In all respects, all of the conduct referred to in ¶ 15, emanated from a wrongful course of concerted and conspiratorial dealing wherein General Motors Corporation, while knowing otherwise, placed IUE and Local 801 in fear that General Motors might not recognize them as the collective bargaining agent at the converted plants, and induced willingness and action on the part of IUE

and Local 801 to go along with General Motors' demand for the abrupt abrogation of the bridge agreement seniority rights of the 2,000 *vis á vis* the 3,500 in order to assure General Motors' recognition of them and not the UAW at the converted plants.

* * *

25. However, during February, 1979, GM, IUE and 801 acted together to cause to be presented to said 3,500 red-circled pre-1977 Frigidaire employees who had continued in their jobs at Frigidaire and to said approximately 2,500 (hereinafter "2,500") post-1976 newly hired Frigidaire employees, and without regard to the 2,000 red-circled pre-1977 Frigidaire employees who had moved to jobs at Delco Air under the red-circling provisions of the Bridge Agreement – proposed modifications of the Local Seniority Agreement of December 10, 1976 and of the Bridge Agreement of December 10, 1976, together with the urging that the same be adopted. They did so in an unlawful, arbitrary and discriminatory manner.

* * *

27. The essence and implied obligations of the Bridge Agreement of December 10, 1976 were the preservation and perpetuation of the acquired and accumulated Frigidaire seniority and order of Frigidaire seniority standing with respect to each continuing employer-employee relationship between GM and each of those who would become an ex-Frigidaire Division employee. In working out and urging the agreements and modifications proposed on February 22, 1979, GM, IUE and 801 withheld from their course of decision-making any good

faith consideration and weighing of the rights, interests, and job security considerations of and as to any of said 2,000, and the aforesaid rational expectation of said 2,000 who thereby had been induced to elect to become ex-Frigidaire Division employees between December 10, 1976 and February 22, 1979. Said concerted course of dealing among GM, IUE and 801 in that regard, including their undertaking thus to limit such preservation and perpetuation of Frigidaire seniority to the lesser senioritied 6,000, while applying such preservation and perpetuation to all 8,000 with respect to the GM Delco Air Conditioning Division plants, constitutes a breach by GM, IUE and 801 of the implied obligations of the Bridge Agreement, and of the intendment, spirit and purpose underlying the Bridge Agreement heretofore described in ¶ 21(a) and (b), for equitable and equal treatment based on acquired and accumulated Frigidaire seniority and the benefits thereafter to arise therefrom for each ex-Frigidaire employee as a continuing employee of GM, vis á vis each other such ex-Frigidaire employee.

28. GM, IUE and 801 concertedly presented, urged and proposed said agreements and modifications in a manner designed to insure their adoption through the permitted withholding of information necessary to meaningfully inform the 2,000 that their "bridge agreement" rights would be impaired by an affirmative ratification.

29. The agreements and modifications of February 23, 1979 among GM, IUE and 801 and affirmed and/or reaffirmed among them on September 18, 1979, provide that upon the conversion of the operations as the Moraine plants from Frigidaire Division's home appliance related manufacturing operations to Chevrolet Motor Division's

motor vehicle related manufacturing operations, that as jobs are to be filled at the Chevrolet plants the Frigidaire employees who then are still laid off from the shut-down of Frigidaire, on a job capability basis, are to be transferred into those jobs together with their full seniority on record at the Frigidaire Division. Said agreements and modifications utilize the Bridge Agreement (Appendix "1") in the manner heretofore described as a vehicle to that end. Said agreements and said modifications among GM, IUE and 801 are tantamount to and should be deemed to have effectuated the contractual substitution by GM, IUE and 801 of the Chevrolet Motor Division and its Moraine plants and jobs for the Frigidaire Division and its Moraine plants and jobs with respect to and for purposes of the Bridge Agreement and its "bumping" rights, procedures and provisions. Accordingly, GM, IUE and 801 should be deemed thereby to be, and are, estopped from denial to said 1,000 laid-off persons who had transferred from Frigidaire to Delco Air the same contractual right to "bump-in" to appropriate jobs at said Chevrolet Division plants as the Bridge Agreement initially provided to them with respect to appropriate jobs at Frigidaire. The aforedescribed concerted by-passing of said 1,000 still laid-off persons from the red-circled 2,000 in disregard of their mostly greater Frigidaire seniority over that of the red-circled 3,500 and newly hired 2,500, has occurred in breach of the aforesaid so effectuated contractual substitution by GM, IUE and 801 of Chevrolet for Frigidaire as to the Bridge Agreement and its "bumping" provisions.

30. Pursuant to the concerted plan of GM, IUE and 801 to substantially confine any consideration of the said

modifications which they were urging be approved and adopted, to said red-circled 3,500 and to said newly hired 2,500, and therefore, necessarily to the arbitrary and discriminatory exclusion of said red-circled 2,000, circulation of the February 21, 1979 issue of "801 News," a copy of which comprises Appendix "2" attached hereto and made a part hereof, was extensively made and accomplished among said 3,500 and said 2,500, but not among said 2,000. Pursuant, also, to said concerted plan of GM, IUE and 801 to so substantially confine any such consideration, such other written notification as occurred to give notice of the special membership meeting and voting which they concertedly planned and scheduled to take place on February 22, 1979, was substantially confined to said 3,500 and said 2,500, as well.

31. In furtherance of said concerted plan of GM, IUE and 801 to so substantially confine any consideration of said modifications, GM, IUE and 801 concertedly confined the scope of any circulated information regarding the proposals to the explanation and discussion of only the benefits to be derived by the persons then employed by Frigidaire while wholly ignoring and being totally silent with respect to any consequent converse detriment whatsoever to the 2,000, including without limitation that heretofore described in ¶ 26(e). Said concertedly confined scope is exemplified by said February 21, 1979 issue of "801 News". As concertedly contemplated by GM, IUE and 801, the direct and forseeable result of the complete absence of any indication in the circulated information that would tend to alert anyone that the Frigidaire seniority standing of the red-circled 2,000 would be by-

passed for purposes of filling the jobs at the contemplated Chevrolet plants by approval and adoption of the proposed agreements and modifications, or that there would be any other consequent converse detriment whatsoever to any of the red-circled 2,000, was to enhance the probability that participation in the vote be substantially confined to the persons then employed at Frigidaire. As hereinafter related, such was the result. To that same end, as well as to diminish any comprehensive consideration of said proposals, GM, IUE and 801 inordinately curtailed the time lapse between the conclusion of their negotiations which occurred on or about February 20, 1979, and a ratification that was required to be concluded so as to meet the requirement of a notice to GM of such ratification no later than February 23, 1979.

32. Ostensibly, the registration and voting procedures as set forth in said February 21 issue of "801 News" were such that any member of 801 by virtue of that membership was entitled to gain admission and endeavor to persuasively voice his views and concerns at said special membership meeting, and to register to vote and to vote a ballot to accept or reject the proposed agreements and modifications. However, the intended effect of such imposed time curtailment and such total absence from the circulated information and explanation of anything that would indicate that the rights of anybody other than the persons then employed at Frigidaire were in any way involved in the proposed agreements and modifications, together with the aforedescribed substantially confined circulation of said issue of "801 News" and other written notification, was that substantially the 801 members who attended, registered and voted at said

special membership meeting were from among those persons that comprised said red-circled 3,500 and said newly hired 2,500.

33. Consequently, as a practical matter said imposed time curtailment and concerted confinement of the scope and distribution of the circulated information and explanation permitted neither an informed nor meaningful deliberation or vote upon said proposed agreements and modifications either by the substantially absent red-circled 2,000 or even by those of the 3,500 and 2,500 who were present and who voted. And as to the 2,000, they were thereby effectively foreclosed and disenfranchised from any opportunity to persuasively urge their interests and concerns, from any meaningful participation in either the consideration or vote upon said proposed agreements and modifications, as well as from any opportunity to first learn of the proposals' adverse implications as to them and thereupon to persuasively urge a fair-minded consideration of their interests. The concerted implementation of those modifications by GM, IUE and 801 has served to undermine and subvert the great reliance which persons comprising the 2,000 had placed on the equitable and equal preserving, perpetuating and honoring for all alike of the red-circled 5,500 of their Frigidaire seniority, which it was the implied obligation and underlying intendment, spirit and purpose of the Bridge Agreement to preserve, perpetuate and honor for all vis á vis one another upon transferring out of Frigidaire, and which had been a material inducement in the 2,000 having elected to accept transfer offers into Delco Air.

34. As a result of an overwhelming majority of those of said 3,500 and 2,500 who attended said special membership meeting having marked a "Yes" box upon ballots comprised of "Yes" and "No" boxes, the so presented, urged and proposed agreements and modifications were so approved. Said so approved agreements and modifications have since that time been known as the "Special Memorandum of Understanding of February 23, 1979" and "certain other agreements reached on February 23, 1979."

35. On or about September 18, 1979, GM, IUE and 801 concertedly acted to and did perpetuate the arbitrary and discriminatory breach of the duty of IUE and 801 of fair representation with respect to the 2,000 and the breach by GM, IUE and 801 of the implied obligations and underlying intendment, spirit and purpose of the Bridge Agreement of December 10, 1976, heretofore described in ¶ 21. They did so by causing a submission for approval by a majority vote of said 3,500 and said 2,500 of a contractual affirmance and/or reaffirmance which GM, IUE and 801 concertedly had worked out in the form of a "Memorandum of Agreement" to be dated September 18, 1979, affirming and/or reaffirming and implementing under the auspices of the 1979 National Agreement between IUE and GM and as part of the 1979 Local Agreement between 801 and GM with respect to the Chevrolet-Moraine Engine Plant and the Chevrolet-Moraine Assembly Plant of the Chevrolet Motor Division, the provisions and effect of said "Special Memorandum of Understanding of February 23, 1979" and said "certain other agreements reached on February 23, 1979." This, including the confinement of the Frigidaire seniority and

order of seniority standing of ex-Frigidaire employees for purposes of the assignment of employees to classifications and occupational groups at the Chevrolet-Moraine Engine Plant and at the Chevrolet-Moraine Assembly Plant to such Frigidaire seniority and standing of only the red-circled 3,500 and the newly hired 2,500, with the consequent by-passing for such purposes of such Frigidaire seniority and standing of said greater senioritied red-circled 2,000.

36. Such confined submission for approval and said so voted approval occurred on or about September 18, 1979, without any notification, access or opportunity having been afforded to any of said 2,000 to meaningfully participate either in the consideration of such submission for approval or in the vote conducted thereon.

37. By virtue of the aforedescribed course of dealing, GM, IUE and 801 have concertedly effectuated an arbitrary, discriminatory and contract-breaching expropriation and abrogation of Frigidaire seniority rights and entitlements that should flow therefrom, as to the minority comprised of the red-circled 2,000 ex-Frigidaire employees. This GM, IUE and 801 have combined to do in the course of extending arbitrary, discriminatory and contract-breaching preferential treatment to the majority comprised of said 3,500 and said 2,500 mostly lesser senioritied ex-Frigidaire employees. And, without any such due consideration or weighing, they have extended to said Chevrolet plants the lesser Frigidaire seniority of the latter while precluding therefrom the greater Frigidaire seniority of the former.

* * *

39. During approximately February, 1980, or in any event shortly after the recall to Delco Air of some of said previously transfer declining persons from among the red-circled 3,500 [Frigidaire employees] instead of such recall being from those of the 2,000 [red-circled] who remained laid-off by Delco Air, inquiry was made of the president of 801 by one or more of the red-circled 2,000 as to the reason for such preference. That is, as to the reason for such preference to those ex-Frigidaire employees who while having greater Frigidaire seniority had previously declined to transfer, instead of recalling an equally skilled though lesser senioritied ex-Frigidaire employee who had accepted the offered opportunity to transfer to Delco Air and who Delco Air subsequently laid off. The responses of the president of 801 to such inquiry made within the course and scope of his capacity as such president and within apparent authority granted him by IUE and 801 to make, was that it was because they are all considered Delco Air employees. He in the same capacity and with the same apparent authority subsequently responded to a similiar inquiry that the reason was that "we can't leave our brothers with seniority out on the street."

40. Consistent with the foregoing impression which he gave that the Frigidaire seniority standing of each of the then 5,500 ex-Frigidaire employees who had been given red-circled status by the Bridge Agreement of December 10, 1976 was being fully recognized, preserved and perpetuated equitably and equally as to each based on his order of Frigidaire seniority vis á vis one another

for recall purposes, the president of 801 on various occasions from August, 1979 at least into August, 1980 repeatedly responded to inquiries from persons among the red-circled 2,000 [Delco workers] that the jobs at the Chevrolet plants definitely would be filled on the basis of the order of the Frigidaire seniority of each one of the ex-Frigidaire employees who would be still in a laid-off condition when those Chevrolet plants were ready to commence operations, including any of the red-circled 2,000 that had transferred to Delco Air and then would be still in a laid-off condition. On occasion he emphasized his response to that effect by displaying and permitting to be read a multi-paged document comprised of communications involving IUE, 801 and federal governmental authority to the effect that 801 was required to cause such participation. On occasion the response included statements by the president of 801 to the effect that the union was founded on seniority, that it has been run on seniority and that such was the way it would continue to be and that the seniority acquired and accumulated at Frigidaire "rules," and that the laid-off of the 2,000 had nothing to worry about as they accordingly would so participate fully in the Chevrolet jobs. Said responses were given by said president of 801 in the course and scope of his capacity as such president and within apparent authority to do so granted him by IUE and 801.

41. During the period said president was making those responses, he and his 801 officers and staff in the course of their said capacities and authority to do so from IUE and 801 were actively encouraging persons among the red-circled 3,500 and the newly hired 2,500 to muster

their forces to counter ongoing petitioning endeavors by certain of the red-circled 2,000 for an express formal resolution to the effect that the laid-off among said 2,000 would be included in the pool of ex-Frigidaire employees from which the Chevrolet plant job openings would be filled. And, such was consistent with his subsequent acknowledgment of the IUE and 801 political reasoning given by him in his capacity as such president and with the apparent authority from IUE and 801 to give, to the effect that since the laid-off ex-Frigidaire employees who had transferred from Frigidaire to Delco Air represented only some 1,000 union members and those ex-Frigidaire employees that were laid-off upon the shut-down of the Frigidaire Division represented some 6,000, the union's position was to fill the Chevrolet jobs only from the 6,000.

* * *

43. The National Agreement of December 10, 1976 was entered into between the Delco Products Division (Kettering, Ohio), Delco Air Conditioning Division (Dayton and Moraine, Ohio), Delco Products Division (Rochester, New York), Packard Electric Division (Warren, Ohio) and Delco-Remy Division (New Brunswick, New Jersey), of General Motors Corporation, collectively referred to therein as the "Corporation," and the International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC, and its Local Unions 717 (Warren, Ohio), 755 and 801 (Dayton, Ohio), 509 (Rochester, New York), and 416 (New Brunswick, New Jersey), collectively referred to therein as the "Union," the same to continue at least through September 14, 1979.

44. Said National Agreement of 1976 was superseded by the National Agreement of September 18, 1979, the parties to which are General Motors Corporation without specification of any divisions and referred to therein as the "Corporation," and the International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC without specification of any local unions and referred to therein as the "Union."

45. Paragraph 59 of said 1976 National Agreement and paragraph 59 of said 1979 National Agreement, each being under that group of provisions entitled "Establishment of New Plants," respectively provide without reference to any particular division, that for the first 24 months after production begins in a new plant:

(a) that the Corporation will give preference to the applications of laid-off employees having seniority in other plants;

(b) that such preference shall operate over applications of individuals who have not previously worked for the Corporation;

(c) with the proviso that "their previous experience in the Corporation shows that they can qualify for the job";

(d) that when so employed, such employees would have the status of temporary employees in the new plant; and

(e) that such employees would "retain their seniority in the plant where originally acquired until broken" in accordance with the seniority rules set forth in said respective National Agreements. The seniority rules

so referred to provide that seniority will be broken for any of the therein listed reasons. Recall or transfer of a laid-off employee to another plant of either the same division or another division is not included among any of the so listed reasons by which seniority would be broken.

46. In the course of so providing that existing laid-off GM employees having seniority in other plants are to have preference over individuals who have not previously worked for GM, and that such seniority shall be retained, it necessarily becomes contractually incumbent on the part of GM upon so drawing from its pool of laid-off employees to do so in accordance with the seniority standing of those respective laid-off employees vis á vis one another to the extent that same may be accomplished within the contractual proviso that their previous GM experience shows that they can qualify for the job at the new plant. The some 1,000 still laid-off ex-Frigidaire employees from the red-circled 2,000 by virtue of their previous GM experience so qualified for the jobs at the new Chevrolet-Moraine plants.

47. The aforedescribed concerted by-passing by GM, IUE and 801 of the some 1,000 persons still laid-off from the red-circled 2,000 in favor of the red-circled 3,500 and the newly hired 2,500, in disregard of the mostly greater Frigidaire seniority of the former over that of the latter for the jobs at the new Chevrolet plants, has occurred in breach of the express and implied contractual obligations imposed by paragraph 59 of said 1976 National Agreement and paragraph 59 of said 1979 National Agreement. The hardened positions of GM, IUE and 801 in such concerted by-passing of said 1,000, as manifested by their aforedescribed course of dealing with

respect to filling the jobs at the new Chevrolet plants, would have rendered the submission of any formal application by any of said 1,000 for any of such jobs a vain, useless and futile act, and excuses any lack of such formal application.

48. Paragraph 60 of said 1976 National Agreement and paragraph 60 of said 1979 National Agreement, each being under said group of provisions entitled "Established of New Plants" respectively require that the Corporation and the International Union engage "in an effort to negotiate an equitable solution" upon the transfer of major operations between plants. If the said conversion of the Frigidaire Moraine plants to Chevrolet Moraine plants comes within the scope and purview of either of said "transfer of major operations" provisions, then said concerted by-pass by GM, IUE and 801 of said 1,000 still laid-off persons from the red-circled 2,000 also constitutes a branch of the obligations of GM and IUE under each such paragraph 60 to have engaged "in an effort to negotiate an equitable solution," the same being instead arbitrary and discriminatory.

* * *

73. The conduct of the defendants as aforesaid constitutes breach of the fiduciary obligation owed by IUE and 801 to the aforesaid plaintiffs as members in good standing of said unions and the corresponding fiduciary rights of said plaintiffs as such members and under pertinent labor agreements that otherwise would have subsisted for the benefit of said plaintiffs numbered 1 through 342 and 601 through 747.

74. The conduct of the defendant IUE with respect to and with the defendant Local 801 as aforesaid was done without lawful right, intentionally, willfully, maliciously and knowingly and was designed to cause denials of said plaintiffs' rights and benefits under the duties and agreements existing between the defendant unions and the plaintiffs in order to wrongfully further the political position of the defendant IUE at the expense of the plaintiffs.

75. As a proximate result of the conduct of the defendant IUE, the defendant Local 801 breached its duties and agreements with the plaintiffs.

76. The conduct of the defendant unions (Local 801 and IUE) as aforesaid was done without lawful right, intentionally, willfully, maliciously, knowingly, and was designed to accommodate, enhance and participate in the denial of rights and benefits of the plaintiffs which had existed, arising both out of the express provisions of the contracts existing between General Motors and the employees (plaintiffs) of General Motors and under implied agreements existing between General Motors and the plaintiffs under the factual circumstances and law applicable thereto.

77. As a proximate result of the conduct of the defendant unions, the defendant General Motors did breach its expressed and implied agreements with the plaintiffs.

78. The conduct of the defendant, General Motors, as aforesaid was done without lawful right, intentionally, willfully, maliciously, knowingly and was designed to cause the defendant unions to breach their contracts,

fiduciary duties and business relationships with plaintiffs, under the threat of impairing and terminating the defendant unions' relationship with the defendant General Motors.

79. As a proximate result of the conduct of the defendant General Motors, the defendant unions did breach their contracts, fiduciary duties and business relationships with said plaintiffs.

80. As a direct result of said violations of the rights of said plaintiffs through said tortious interference, invasion and conspiracy, the same fact of damage, injuries and damages have been sustained by the plaintiffs as heretofore referred to.

81. As a further direct result of said violations of their rights, each of the plaintiffs referred to heretofore and those now on layoff has suffered lost wages in the future, and has and will to a reasonably psychological certainty continue to suffer and sustain an appreciable diminishment in his or her self-esteem and dignity, and has endured and to a reasonable psychological certainty will continue to endure severe emotional distress, anxiety and mental anguish, as will each of the still employed plaintiffs upon his becoming laid off.

82. Each of the plaintiffs referred to as a spouse of one or another of the plaintiffs, as a direct result of the adverse effects upon the income, self-esteem and dignity and of said emotional distress, anxiety and mental anguish which have already or will yet commence, and to a reasonable psychological certainty will continue to be so suffered, sustained and endured by said spouse's husband or wife, each such spouse claims a loss of services,

society and companionship with respect to each such spouse's husband or wife.

83. To the full extent permitted by law each of the plaintiffs referred to heretofore should have money judgment against defendants GM, IUE and 801, jointly and severally for such of the impact and injuries aforedescribed, as each such plaintiff shall be found to have sustained, together with such pre-judgment interest as will serve to make plaintiffs whole regarding general monetary damages.

* * *

89. The conduct of the defendants, jointly and severally, was negligent and/or intentional and/or reckless and proximately caused severe emotional distress to the plaintiffs.

* * *

DEMAND FOR RELIEF

* * *

1. That each and every plaintiff have declaratory judgment and such further relief including applicable injunctive relief – as shall be proper in conjunction with that declaratory judgment, with respect to each of the collective bargaining agreements heretofore described in the complaint, declaring that the express and implied obligations, as well as the intendment, spirit and purpose of each of said collective bargaining agreements in each of the respects hereinabove alleged in this complaint;

* * *

4. That GM be adjudged to have breached each of the collective bargaining agreements, as to each of the plaintiffs, in all of the foregoing respects, in violation of their respective rights;

* * *

RULE 29.1 LIST OF NON-WHOLLY OWNED SUBSIDIARIES OF GENERAL MOTORS CORPORATION

AC Bakony Kft. (Hungary)

AMBRAKE Corporation (USA)

AMRAAM International Licensing Company (USA)

American Manufacturing Systems, Inc. (USA)

Asset Leasing GmbH (West Germany)

Atlantic Satellites Ltd. (Ireland)

Aura Srl (Italy)

Banque de Credit General Motors (France)

Beijing International Information Processing Company Limited (Peoples Republic of China)

British Caledonian Flight Training Limited (England)

CAMI Automotive, Inc. (Canada)

Carus Grundstucks-Vermietungsgesellschaft mbH & Co. Object Kuno 65 KG (West Germany)

Carus Grundstucks-Vermietungsgesellschaft mbH & Co. Object Leo 40 KG (West Germany)

China Management Systems Corporation (China)

Comlinear Corporation (USA)

Convesco Vehicles Sales GmbH (West Germany)

DRB s.a./n.v. (Belgium)

Daewoo Automotive Components, Ltd. (Korea)

Daewoo Motor Co., Ltd. (Korea)

Delkor Battery Company, Ltd. (Korea)

Diavia SpA (Italy)

EPEC S.A. (Brazil)

Earth Observation Satellite Company (USA)

Emperion Corporation (USA)

Fabrica Colombiana de Automotores S.A. ("Colomotores") (Colombia)

Federal Computer Services Corp. (USA)

Federal Integrated Systems Corporation (USA)

G & F Company (USA)

GM Allison Japan Limited (Japan)

G.M.A.C. Financiera de Colombia S.A. Compania de Financiamiento Comercial (Colombia)

GMFanuc Robotics Canada Ltd. (Canada)

GMFanuc Robotics Corporation (USA)

GMFanuc Robotics Europe GmbH (West Germany)

GMFanuc Robotics Italia S.r.l. (Italy)

GMFanuc Robotics (U.K.) Ltd. (England)

GMFanuc Robotique France S.A.R.L. (France)

General Motors Bankgesellschaft m.b.H. (Austria)

General Motors del Ecuador S.A. (Ecuador)

General Motors France Automobiles S.A. (France)

H & D Radio Frequency Identification Products (USA)

H & R Company (USA)

HBC (USA)

HKV (USA)

Hughes-Kenwood RDSS, Inc. (USA)

IBC Vehicles Limited (United Kingdom)

I.K. Coach Co., Limited (Japan)

ITC Inland Teknik Oto Yan Sanayi Sirketi (Turkey)

International Electro-Optical Industry Anonim Sirketi (Turkey)

Interpractice Systems, Inc. (USA)

Kabelwerke Reinshagen GmbH (West Germany)

Kabelwerke Reinshagen Werk Berlin GmbH (West Germany)

Kabelwerke Reinshagen Werk Neumarkt GmbH (West Germany)

Koram Plastics Company, Ltd. (Korea)

LEA GP Incorporated (USA)

Light Helicopter Turbine Engine Company (USA)

MET (USA)

Metal Casting Technology, Inc. (USA)

Millbrook Pension Management Ltd. (England)

Neodata Holdings, Inc. (USA)

New United Motor Manufacturing, Inc. (USA)

Nippon EDS Co., Ltd. (Japan)

Opel-Automobilwerk Eisenach-PKW GmbH (West Germany)

Opel-Wohnbau GmbH (West Germany)

Packard CTA Pty. Ltd. (Australia)

Packard Electric Vas kft (Hungary)

Saab Automobile AB (Sweden)

Shinsung Packard Company, Ltd. (Korea)

Societe Francaise des Amortisseurs de Carbon S.A. (France)

Sung San Company, Ltd. (Korea)

Systems Technology Management Corporation (Korea)

T.A.D. Communications Company (USA)

3DK Limited (United Kingdom)

Truck and Bus Engineering U.K., Limited (USA)

United Australian Automotive Industries Limited (Australia)

Vanguarda Componentes Automotivas, S.A. (Brazil)

Vehicle Test Technology, Inc. (USA)